

9 VAC 5 CHAPTER 60.  
HAZARDOUS AIR POLLUTANT SOURCES.

PART II.  
Emission Standards.

ARTICLE 3.  
Control Technology Determinations for  
Major Sources of Hazardous Air Pollutants (Rule 6-3).

9 VAC 5-60-120. Applicability.

A. The provisions of this article apply to any owner of a major source of hazardous air pollutants which includes one or more stationary sources included in a source category or subcategory for which the Administrator has failed to promulgate a MACT standard by the section 112(j) deadline.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

9 VAC 5-60-130. Definitions.

A. For the purpose of the Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Administrator" means the Administrator of the United States Environmental Protection Agency or his authorized representative.

"Area source" means any stationary source of hazardous air pollutants that is not a major source.

"Available information" means, for purposes of conducting a MACT floor finding and identifying control technology options for emission units subject to the provisions of this article, information contained in the following information sources as of the section 112(j) deadline:

1. A relevant proposed regulation, including all supporting information.
2. Background information documents for a draft or proposed regulation.
3. Any regulation, information, or guidance collected by the board or administrator establishing a MACT floor finding or a case-by-case MACT determination.
4. Data and information available from the Control Technology Center developed pursuant to section 112(l)(3) of the federal Clean Air Act.
5. Data and information contained in the Aerometric Informational Retrieval System (AIRS), including information in the MACT database.
6. Any additional information that can be expeditiously provided by the board or administrator.

7. Any information provided by applicants in an application for a federal operating permit, permit modification, administrative amendment, or hazardous air pollutant new source review permit pursuant to the requirements of this article.

8. Any additional relevant information provided by the applicant.

"Case-by-case MACT determination" means a determination by the board, pursuant to the requirements of this article, which establishes a MACT emission limitation, MACT work practice standard, or other MACT requirements for an affected source subject to this article.

"Control technology" means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including, but not limited to, measures which:

1. Reduce the quantity, or eliminate emissions, of such pollutants through process changes, substitution of materials or other modifications;

2. Enclose systems or processes to eliminate emissions;

3. Collect, capture, or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification); or

5. Are a combination of subdivisions 1 through 4 of this definition.

"Effective date" means:

1. With regard to a MACT standard, the date of promulgation in the Federal Register of such standard; or

2. With regard to an alternative emission limitation or equivalent emission limitation determined by the board, the date that the alternative emission limitation or equivalent emission limitation becomes effective.

"Emission point" means any part or activity of a major source that emits or has the potential to emit, under current operational design, any hazardous air pollutant.

"Emission standard" means an emission standard, limitation, prohibition, or other regulation promulgated in 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.).

"Emission unit" means any building, structure, facility, or installation. This could include an emission point or collection of emission points, within a major source, which the board determines is the appropriate entity for making a case-by-case MACT determination, i.e., any of the following:

1. An emission point that can be individually controlled.

2. The smallest grouping of emission points, that, when collected together, can be commonly controlled by a single control device or work practice.

3. Any grouping of emission points, that, when collected together, can be commonly controlled by a single control device or work practice.

4. A grouping of emission points that are functionally related. Equipment is functionally related if the operation or action for which the equipment was specifically designed could not occur without being connected with or without relying on the operation of another piece of equipment.

5. The entire geographical entity comprising a major source in a source category subject to a case-by-case MACT determination under this article.

"Enhanced review" means a review process containing all administrative steps needed to ensure that the terms and conditions resulting from the review process can be incorporated into the federal operating permit by an administrative amendment.

"EPA" means the United States Environmental Protection Agency.

"Equivalent emission limitation" means an emission limitation, established under this article, which is at least as stringent as the MACT standard that EPA would have promulgated under section 112(d) or section 112(h) of the federal Clean Air Act.

"Existing major source" means a major source, construction or reconstruction of which is commenced before EPA proposed a MACT standard, applicable to the major source, or if no proposal was published, then on or before the section 112(j) deadline.

"Federal operating permit" means a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of Part II of 9 VAC 5 Chapter 80.

"Federal operating permit program" means the operating permit system established pursuant to title V of the federal Clean Air Act and regulations codified in Article 1 (9 VAC 5-80-50 et seq.), Article 2 (9 VAC 5-80-310 et seq.), Article 3 (9 VAC 5-80-360 et seq.), and Article 4 (9 VAC 5-80-710 et seq.) of Part II of 9 VAC 5 Chapter 80.

"Federally enforceable" means all limitations and conditions that are enforceable by the Administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the Administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an approved ~~State Implementation Plan (SIP)~~ or a Federal Implementation Plan (FIP) implementation plan.

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or ~~any construction~~ a new source review program] permit issued under regulations approved by the EPA ~~in accordance with 40 CFR part 51~~ into the implementation plan].

6. Limitations and conditions that are part of ~~an a state] operating permit issued [pursuant to a program under regulations]~~ approved by the EPA into ~~a SIP the implemenation plan]~~ as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

7. Limitations and conditions in a Virginia regulation or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112.

8. Individual consent agreements that the EPA has legal authority to create.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Hazardous air pollutant new source review permit" means a document issued pursuant to Article 7 (9 VAC 5-80-1400 et seq.) of Part II of 9 VAC 5 Chapter 80 containing all federally enforceable conditions necessary to enforce the application and operation of any maximum achievable control technology or other control technologies such that the MACT emission limitation is met.

"Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the board establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

"Maximum achievable control technology (MACT) emission limitation for existing sources" means the emission limitation reflecting the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the board, taking into consideration the cost of achieving such emission reductions, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such a MACT standard applies. This limitation shall not be less stringent than the MACT floor.

"Maximum achievable control technology (MACT) emission limitation for new sources" means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the board, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such a MACT standard applies.

"Maximum achievable control technology (MACT) floor" means:

1. For existing sources:

a. The average emission limitation achieved by the best performing 12 percent of the existing sources in the United States (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the MACT standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in 9 VAC 5-80-30 B) applicable to the source category and prevailing at the time, in the category or subcategory, for categories and subcategories of stationary sources with 30 or more sources; or

b. The average emission limitation achieved by the best performing five sources in the United States (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory, for a category or subcategory of stationary sources with fewer than 30 sources;

2. For new sources, the emission limitation achieved in practice by the best controlled similar source.

"Maximum achievable control technology (MACT) standard" means (i) an emission standard; (ii) an alternative emission standard; or (iii) an alternative emission limitation promulgated in 40 CFR Part 63 that applies to the stationary source, the group of stationary sources, or the portion of a stationary source regulated by such standard or limitation. A MACT standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique (including prohibition of emissions) that the Administrator establishes for new or existing sources to which such standard or limitation applies. Every MACT standard established pursuant to § 112 of the federal Clean Air Act includes subpart A of 40 CFR Part 63 and all applicable appendices of 40 CFR Part 63 or of other parts of Title 40 of the Code of Federal Regulations that are referenced in that standard.

"Minor new source review permit" means a document issued pursuant to [Article 6 (9 VAC 5-80-1100 et seq.) of Part II of 9 VAC 5 Chapter 80 9 VAC 5-80-10] containing all federally enforceable conditions necessary to enforce the application and operation of any best achievable control technology or other requirements such that the applicable requirements are met.

"New emission unit" means an emission unit for which construction or reconstruction is commenced after the section 112(j) deadline, or after proposal of a MACT standard, whichever comes first, except that, as provided by 9 VAC 5-60-140 F 1, an emission unit, at a major source, for which construction or reconstruction is commenced before the date upon which the area source becomes a major source, shall not be considered a new emission unit if, after the addition of such emission unit, the source is still an area source.

"New major source" means a major source for which construction or reconstruction is commenced after the section 112(j) deadline, or after proposal of a MACT standard, whichever comes first.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with ~~regulations~~ 9 VAC 5-80-10 of Part I or Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 580-1700 et seq.), or Article 9 (9 VAC 5-80-2000 et seq.) of this part.] promulgated to implement the requirements of §§ 110(a)(2)(c), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state and federally enforceable. Fugitive emissions count in determining the potential to emit of a stationary source. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Section 112(j) deadline" means the date 18 months, after the date by which a MACT standard is scheduled to be promulgated, except for all major sources listed in the source category schedule for which a MACT standard is scheduled to be promulgated by November 15, 1994, the section 112(j) deadline is November 15, 1996.

"Similar source" means an emission unit that has comparable emissions and is structurally similar in design and capacity to other emission units such that the emission units could be controlled using the same control technology.

"Source category schedule for standards" means the schedule issued pursuant to § 112(e) for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and published in the Federal Register at 63 FR 7155, February 12, 1998.

"United States" means the United States, its possessions and territories.

9 VAC 5-60-140. Approval process for new and existing emission units.

A. The procedures for submitting an application are as follows:

1. Except as provided in subsection A 3 of this section, if the Administrator fails to promulgate a MACT standard on or before an applicable section 112(j) deadline for a source category or subcategory, the owner of an existing major source that includes one or more stationary sources in such category or subcategory, shall submit an application for a federal operating permit or application for a significant permit modification, whichever is applicable, by the section 112(j) deadline.

2. If the Administrator fails to promulgate a MACT standard on or before an applicable section 112(j) deadline for a source category or subcategory, the owner of a new emission unit in such source category or subcategory shall submit an application for a federal operating permit or application for a significant permit modification or administrative

amendment, whichever is applicable, in accordance with procedures established under the federal operating permit program.

3. The circumstances under which an application shall be submitted are as follows:

a. The owner of an existing major source that already has a federal operating permit requiring compliance with a limit that would meet the requirements of this article shall submit an application for an administrative permit amendment, by the section 112(j) deadline, in accordance with procedures established under the federal operating permit program.

b. The owner of a new emission unit that currently complies with a federally enforceable alternative emission limitation, or has a federal operating permit that already contains emission limitations substantively meeting the requirements of this article, shall submit an application for an administrative permit amendment confirming compliance with the requirements of this article, in accordance with procedures established under the federal operating permit program, and not later than the date 30 days after the date construction or reconstruction is commenced.

4. In addition to meeting the requirements of subsection A 2 of this section, the owner of a new emission unit shall submit an application for a hazardous air pollutant new source review permit before construction, pursuant to 9 VAC 5-60-160.

B. The procedures for permit review are as follows:

1. Permit applications submitted under this section shall be reviewed and approved or disapproved according to procedures established under the federal operating permit program. In the event that the board disapproves a permit application submitted under this section or determines that the application is incomplete, the owner shall revise and resubmit the application to meet the objections of the board not later than six months after first being notified that the application was disapproved or is incomplete.

2. If the owner has submitted a timely and complete application for a federal operating permit, significant permit modification, or administrative amendment required by this section, any failure to have this permit shall not be a violation of the requirements of this subsection, unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.

C. The federal operating permit or applicable new source review permit, whichever is applicable, shall contain an equivalent emission limitation (or limitations) for that category or subcategory determined on a case-by-case basis by the board; or, if the applicable criteria in subpart D of 40 CFR Part 63 are met, the federal operating permit or applicable new source review permit may contain an alternative emission limitation. For the purposes of the preceding sentence, early reductions made pursuant to section 112(i)(5)(A) of the federal Clean Air Act shall be achieved not later than the date on which the MACT standard should have been promulgated according to the source category schedule for standards.

1. The federal operating permit or applicable new source review permit shall contain an emission standard or an emission limitation to control the emissions of hazardous air pollutants. The MACT emission limitation shall be determined by the board and shall be based on the degree of emission reductions that can be achieved, if the control technologies or work practices are installed, maintained, and operated properly. Such emission limitation shall be established consistent with the principles contained in 9 VAC 5-60-170.

2. The federal operating permit or applicable new source review permit shall specify any notification, operation and maintenance, performance testing, monitoring, reporting and recordkeeping requirements. The federal operating permit or applicable new source review permit shall include the following information:

a. In addition to the MACT emission limitation required by subdivision C 1 of this section, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure federal enforceability of the MACT emission limitation;

b. Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with requirements established pursuant to the federal operating permit program, subsection E of this section, and, at the discretion of the board, to subpart A of 40 CFR Part 63;

c. A statement requiring the owner to comply with all requirements contained in subpart A of 40 CFR Part 63 deemed by the board to be applicable;

d. A compliance date(s) by which the owner shall be in compliance with the MACT emission limitation, and all other applicable terms and conditions of the permit.

D. The compliance schedule is as follows:

1. The owner of an existing major source subject to the requirements of this section shall comply with the emission limitation(s) established in the source's federal operating permit. In no case shall such compliance date exceed 3 years after the issuance of the federal operating permit for that source, except where the board issues a federal operating permit that grants an additional year to comply in accordance with section 112(i)(3)(B), or unless otherwise specified in section 112(i), or in subpart D of 40 CFR Part 63.

2. The owner of a new emission unit subject to the requirements of this section shall comply with a new source MACT level of control immediately upon issuance of the federal operating permit for the emission unit.

E. In accordance with section 114(a)(3) of the federal Clean Air Act, monitoring shall be capable of detecting deviations from each applicable emission limitation or other standard with sufficient reliability and timeliness to determine continuous compliance over the applicable reporting period. Such monitoring data may be used as a basis for enforcing emission limitations established under this article.

F. Provisions concerning area sources that become major sources are as follows:

1. After the effective date of this article, the owner of a new or existing area source that increases its emissions of, or its potential to emit, hazardous air pollutants such that the source becomes a major source that is subject to this article shall submit an application for a federal operating permit or application for a significant permit modification, or administrative amendment, whichever is applicable, by the date that such source becomes a major source.

a. If an existing area source becomes a major source by the addition of an emission unit or as a result of reconstructing, that added emission unit or reconstructed emission unit shall comply with all requirements of this article that affect new emission units, including the compliance date for new emission units established in subsection D of this section.

b. If an area source, constructed after the section 112(j) deadline, becomes a major source solely by virtue of a relaxation in any federally enforceable emission limitation, established after the section 112(j) deadline, on the capacity of an emission unit or units to emit a hazardous air pollutant, such as a restriction on hours of operation, then that emission unit or units shall comply with all requirements of this article that affect new emission units, on or before the date of such relaxation.

2. After the effective date of this article, if the Administrator establishes a lesser quantity emission rate under section 112(a)(1) of the federal Clean Air Act that results in an area source becoming a major source, then the owner of such major source shall submit an application for a federal operating permit or application for a significant permit modification, or administrative amendment, whichever is applicable, on or before the date 6 months from the date that such source becomes a major source. If an existing area source becomes a major source as a result of the Administrator establishing a lesser quantity emission rate, then any emission unit, at that source, for which construction or reconstruction is commenced before the date upon which the source becomes major shall not be considered a new emission unit.

9 VAC 5-60-150. Application content for case-by-case MACT determinations.

A. Except as provided by 9 VAC 5-60-170 A 3, an application for a case-by-case MACT determination shall demonstrate how an emission unit shall obtain the degree of emission reduction that the board has determined is at least as

stringent as the emission reduction that would have been obtained had the MACT standard been promulgated according to the source category schedule for standards for the source category of which the emission unit is a member.

B. The application for a case-by-case MACT determination shall contain the following information:

1. The name and address (physical location) of the major source:

2. A brief description of the major source, its source category or categories, a description of the emission unit(s) requiring a case-by-case MACT determination pursuant to other requirements in this article, and a description of whether the emission unit(s) require new source MACT or existing source MACT based on the definitions established in 9 VAC 5-60-130:

3. For a new emission unit, the expected date of commencement of construction:

4. For a new emission unit, the expected date of completion of construction:

5. For a new emission unit, the anticipated date of startup of operation:

6. The hazardous air pollutants emitted by each emission point, and an estimated emission rate for each hazardous air pollutant.

7. Any existing federally enforceable emission limitations applicable to the emission point.

8. The maximum and expected utilization of capacity of each emission point, and the associated uncontrolled emission rates for each emission point:

9. The controlled emissions for each emission point in tons/year at expected and maximum utilization of capacity, and identification of control technology in place:

10. Except as provided in 9 VAC 5-60-170 A 3, the MACT floor as specified by the board.

11. Except as provided in 9 VAC 5-60-170 A 3, recommended emission limitations for the emission unit(s), and supporting information, consistent with 9 VAC 5-60-140 C and 9 VAC 5-60-170 A.

12. Except as provided in 9 VAC 5-60-170 A 3, a description of the control technologies that shall apply to meet the emission limitations including technical information on the design, operation, size, estimated control efficiency, and any other information deemed appropriate by the board, and identification of the emission points to which the control technologies shall be applied;

13. Except as provided in 9 VAC 5-60-170 A 3, parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

14. Any other information required by the board including, at the discretion of the board, information required pursuant to subpart A of 40 CFR Part 63.

9 VAC 5-60-160. Preconstruction review procedures for new emission units.

A. The review process for new emission units is as follows:

1. If the board requires an owner to obtain or revise a federal operating permit before construction of the new emission unit, or when the owner chooses to obtain or revise a federal operating permit before construction, the owner shall follow the administrative procedures established under the federal operating permit program before construction of the new emission unit.

2. If an owner is not required to obtain or revise a federal operating permit before construction of the new emission unit (and has not elected to do so), but the new emission unit is covered by any preconstruction or

pre-operation review requirements established pursuant to the hazardous air pollutant new source review program, then the owner shall comply with those requirements. If the new emission unit is not subject to the hazardous air pollutant new source review program, the board shall issue a minor new source review (MNSR) permit in accordance with the MNSR permit procedures supplemented by the procedures set forth in subsections B through H of this section before construction or operation of the new emission unit.

3. Regardless of the review process, the case-by-case MACT determination shall be consistent with the principles established in 9 VAC 5-60-170. The application for the applicable new source review permit or a federal operating permit, permit modification, or administrative amendment, whichever is applicable, shall include the documentation required by 9 VAC 5-60-150.

B. The board shall provide for an enhanced review of MNSR permits used to implement case-by-case MACT determinations in accordance with the following review procedures and compliance requirements.

1. The board shall notify the owner in writing as to whether the application for a case-by-case MACT determination is complete or whether additional information is required.

2. The board shall approve an applicant's proposed control technology, or the board shall notify the owner in writing of its intention to disapprove a control technology.

3. The owner may present in writing, within a time frame specified by the board, additional information, considerations, or amendments to the application before the board's issuance of a final disapproval.

4. The board shall issue a preliminary approval or issue a disapproval of the application, taking into account additional information received from the owner.

5. A determination to disapprove any application shall be in writing and shall specify the grounds on which the disapproval is based.

6. Approval of an applicant's proposed control technology shall be set forth in a MNSR permit as described in 9 VAC 5-60-140 C.

C. The board shall provide opportunity for public comment on the preliminary MNSR permit prior to issuance, including, at a minimum,

1. Availability for public inspection in at least one location in the area affected of the information submitted by the owner and of the board's tentative determination;

2. A period for submittal of public comment of at least 30 days; and

3. A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in 9 VAC 5-60-140 C. The form and content of the notice shall be substantially equivalent to that found in 9 VAC 5-80-270 or 9 VAC 5-80-670.

4. An opportunity for a public hearing, if one is requested. The board shall give at least 30 days notice in advance of any hearing.

D. The board shall send copies of the preliminary permit (in time for comment) and final permit required by subsection C of this section to the Administrator through the appropriate Regional Office, and to all other state and local air pollution control agencies having jurisdiction in the region in which the new source would be located. The board shall provide EPA with a review period for the final notice of at least 45 days, and shall not issue the final MNSR permit unless EPA objections are satisfied.

E. The effective date for new sources under this subsection shall be the date a MNSR permit is issued to the owner of a new emission unit.

F. New emission units shall comply with case-by-case MACT determination upon issuance of a federal operating permit for the emission unit or as prescribed in the MNSR permit, whichever is applicable.

G. An owner of a major source that is subject to a case-by-case MACT determination shall comply with notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements established under 9 VAC 5-60-140 E, under the federal operating permit program, and at the discretion of the board, under subpart A of 40 CFR Part 63. The board shall provide the EPA with the opportunity to review compliance requirements for consistency with requirements established pursuant to the federal operating permit program during the review period under subsection D of this section.

H. If a board requires a new source review permit for new source case-by-case MACT determinations under this article, such requirement shall not necessitate a determination under subpart E of 40 CFR Part 63.

9 VAC 5-60-170. Maximum achievable control technology (MACT) determinations for emission units subject to case-by-case determination of equivalent emission limitations.

A. The owner of a major source submitting an application pursuant to 9 VAC 5-60-140 or 9 VAC 5-60-160 shall include elements specified in 9 VAC 5-60-150, taking into consideration the following requirements:

1. When the Administrator has proposed a MACT standard for the source category, then the control technologies recommended by the owner under 9 VAC 5-60-150 B 12, when applied to the emission points recommended by the applicant for control, shall be capable of achieving all emission limitations and requirements of the proposed standard unless the application contains information adequate to support a contention that:

a. Different emissions limitations represent the maximum achievable control technology emission limitations for the source category, or

b. Requirements different from those proposed by EPA shall be effective in ensuring that MACT emissions limitations are achieved.

2. When the Administrator or the board has issued guidance or distributed information establishing a MACT floor finding for the source category or subcategory by the section 112(j) deadline, then the recommended MACT emission limitations required by 9 VAC 560-150 B 11 must be at least as stringent as the MACT floor, unless the application contains information adequately supporting an amendment to such MACT floor.

3. When neither the Administrator nor the board has issued guidance or distributed information establishing a MACT floor finding and case-by-case MACT determination for a source category or subcategory by the section 112(j) deadline, then the owner shall submit an application for a federal operating permit or application for a hazardous air pollutant new source review permit, whichever is applicable, containing the elements required by 9 VAC 5-60-150 B 1 through 9 and 14, by the section 112(j) deadline.

4. The owner may recommend a control technology that either achieves a level of control at least as stringent as the emission control that is achieved in practice by the best controlled similar source, or obtains at least the maximum reduction in emissions of hazardous air pollutants that is achievable considering costs, non air quality health and environmental impacts, and energy requirements.

5. The owner may select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the board determines that a hazardous air pollutant (HAP) or HAPs cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any federal, state, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

B. The board shall determine whether the federal operating permit application or application for the applicable new source review permit is approvable. If approvable, the board shall establish hazardous air pollutant emissions limitations equivalent to the limitation that would apply if a MACT standard had been issued in a timely manner. The board shall establish these emissions limitations consistent with the following requirements and principles:

1. Emission limitations shall be established for all emission units within a source category or subcategory for which the section 112(j) deadline has passed.

2. Each emission limitation for an existing emission unit shall reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emission, where achievable) that the board, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by emission units in the category or subcategory for which the section 112(j) deadline has passed. This limitation shall not be less stringent than the MACT floor, and shall be based upon available information and information generated by the board before or during the application review process, including information provided in public comments.

3. Each emission limitation for a new emission unit shall not be less stringent than the emission limitation achieved in practice by the best controlled similar source, and must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the board, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable. This limitation shall be based at a minimum upon available information and information provided in public comments.

4. When the Administrator has proposed a MACT standard for the source category, then the equivalent emission limitation established by the board shall ensure that all emission limitations and requirements of the proposed standard are achieved, unless the board determines based on additional information that:

a. Different emissions limitations represent the maximum achievable control technology emission limitations for the source category; or

b. Requirements different from those proposed by EPA shall be effective in ensuring that MACT emissions limitations are achieved.

5. When the Administrator or the board has issued guidance or collected information establishing a MACT floor finding for the source category or subcategory, the equivalent emission limitation for an emission unit must be at least as stringent as that MACT floor finding unless, based on additional information, the board determines that the additional information adequately supports an amendment to the MACT floor. In that case, the equivalent emission limitation must be at least as stringent as the amended MACT floor.

6. The board shall select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the board determines that a hazardous air pollutant (HAP) or HAPs cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any federal, state, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

7. Nothing in this article shall prevent the board from establishing an emission limitation more stringent than required by federal regulations.

C. The owner shall submit additional copies of its application for a federal operating permit, permit modification, administrative amendment, or applicable new source review permit, whichever is applicable, to the EPA by the section 112(j) deadline for existing emission units, or by the date of the application for a federal operating permit or applicable new source review permit for new emission units.

9 VAC 5-60-180. Requirements for case-by-case determination of equivalent emission limitations after promulgation of a subsequent MACT standard.

A. If the Administrator promulgates a MACT standard that is applicable to one or more emission units within a major source before the date a federal operating permit application under this subsection is approved, the permit shall contain the promulgated standard rather than the emission limitation determined under 9 VAC 5-60-140, and the owner shall comply with the promulgated standard by the compliance date in the promulgated standard.

B. If the Administrator promulgates a MACT standard under section 112 (d) or (h) of the federal Clean Air Act that is applicable to a source after the date a federal operating permit is issued pursuant to 9 VAC 5-60-140 or 9 VAC 5-60-160, the board shall revise the federal operating permit upon its next renewal to reflect the promulgated standard. The board shall establish a compliance date in the revised federal operating permit that assures that the owner shall comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the date by which the owner was first required to comply with the emission limitation established by federal operating permit, whichever is earlier.

C. Notwithstanding the requirements of subdivision (a) or (b) of this section, if the Administrator promulgates a MACT standard that is applicable to a source after the date a federal operating permit application is approved under 9 VAC 5-60-140 or 9 VAC 5-60-160, the board is not required to change the emission limitation in the federal operating permit to reflect the promulgated standard if the level of control required by the emission limitation in the federal operating permit is at least as stringent as that required by the promulgated standard.

#### 9 VAC 5 CHAPTER 80.

#### PERMITS FOR STATIONARY SOURCES.

#### ARTICLE 1.

#### Federal Operating Permits for Stationary Sources ~~[(Rule 8-5)].~~

9 VAC 5-80-50. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to the following stationary sources:

1. Any major source.
2. Any source, including an area source, subject to a standard, limitation, or other requirement under § 111 of the federal Clean Air Act.
3. Any source, including an area source, subject to a standard, limitation, or other requirement under § 112 of the federal Clean Air Act.
4. Any affected source or any portion thereof not subject to Article 3 (9 VAC 5-80-360 et seq.) of this chapter.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

1. Any source that would be subject to this article solely because it is subject to the provisions of 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters), as prescribed in Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50.
2. Any source that would be subject to this article solely because it is subject to the provisions of 40 CFR Part 61, Subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos, Standard for Demolition and Renovation, as prescribed in Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.

3. Any source that would be subject to this article solely because it is subject to regulations or requirements concerning prevention of accidental releases under § 112(r) of the federal Clean Air Act.

4. Any emissions unit that is determined to be shutdown under the provisions of ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, 9 VAC 5-80-30, 9 VAC 5-80-40 or 9 VAC 5-80-180~~ 9 VAC 5-20-220.

D. ~~Deferral~~ Sources shall be deferred from initial applicability as follows.

1. ~~Sources deferred from initial applicability.~~

Area sources subject to this article under subsection A 2 or subsection A 3 of this section shall be deferred from the obligation to obtain a permit under this article except as follows.

a. ~~The decision to require a permit for these sources shall be made at the time that a new standard is promulgated and shall be incorporated into 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) or 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.) along with the listing of the new standard. In cases for which EPA has promulgated a standard under § 111 or § 112 and has declared that the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.~~

b. In cases for which EPA has promulgated a standard under § 111 or § 112 after July 21, 1992, and has failed to declare whether the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

2. ~~Sources not deferred from initial applicability.~~

The following sources shall not be deferred from the obligation to obtain a permit under this article:

a. Major sources.

b. Solid waste incineration units subject to the provisions of 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) and 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) as adopted pursuant to § 129 (e) of the federal Clean Air Act.

3. Any source deferred under subsection D 1 of this section may apply for a permit. The board may issue the permit if the issuance of the permit does not interfere with the issuance of permits for sources that are not deferred under this section or otherwise interfere with the implementation of this article.

E. Regardless of the exemptions provided in this section, permits shall be required of owners who circumvent the requirements of this article by causing or allowing a pattern of ownership or development of a source which, except for the pattern of ownership or development, would otherwise require a permit.

F. ~~The provisions of 9 VAC 5-80-90 concerning application requirements shall not apply to insignificant activities designated in 9 VAC 5-80-720 with the exception of the requirements of 9 VAC 5-80-710. Particulate matter emissions shall be used to determine the applicability of this article to major sources only if particulate matter (PM<sub>10</sub>) emissions cannot be quantified in a manner acceptable to the board.~~

9 VAC 5-80-60. Definitions.

A. For the purpose of ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Affected source" means a source that includes one or more affected units.

"Affected states" means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Parts 72, 73, 75, 76, 77 or 78.

"Allowable emissions" means the emission rates of a stationary source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate or hours of operation or both) and the most stringent of the following:

- a. Applicable emission standards.
- b. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.
- c. Any other applicable emission limitation, including those with a future compliance date.

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in the ~~State Implementation Plan or the Federal Implementation Plan~~ implementation plan, including any source-specific provisions such as consent agreements or orders.

b. Any term or condition of any preconstruction permit issued pursuant to ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this part or 9 VAC 5-80-30~~ the new source review program or of any operating permit issued pursuant to ~~9 VAC 5-80-40~~ the state operating permit program, except for terms or conditions derived from applicable state requirements [~~or from any requirement of these regulations~~ Regulations for the Control and Abatement of Air Pollution ~~not included in the definition of applicable requirement~~].

c. Any standard or other requirement prescribed under ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution, particularly the provisions of 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) or 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.), adopted pursuant to requirements of the federal Clean Air Act or under § 111, 112 or 129 of the federal Clean Air Act.

d. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

e. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act or ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution.

f. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

g. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

h. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

i. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

j. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9 VAC 5-80-1700 et seq.) of this part.

"Applicable requirement" means any applicable federal requirement or any applicable state requirement included in a permit issued under this article as provided in 9 VAC 5-80-300.

"Applicable state requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement prescribed by any regulation ~~adopted pursuant to a requirement of the Code of Virginia governing a specific subject or category of sources~~ of the board [that is not included in the definition of applicable federal requirement].

b. Any regulatory provision or definition directly associated with or related to any of the ~~[specific]~~ state requirements listed in this definition.

"Area source" means any stationary source that is not a major source. For purposes of this article, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Complete application" means an application that contains all the information required pursuant to 9 VAC 5-80-80 and 9 VAC 5-80-90 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the board from requesting or accepting additional information.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this regulation, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program. Whenever the term "designated representative" is used in this regulation, the term shall be construed to include the alternate designated representative.

"Draft permit" means the version of a permit for which the board offers public participation under 9 VAC 5-80-270 or affected state review under 9 VAC 5-80-290.

"Emissions allowable under the permit" means a federally and state enforceable or state-only enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in 40 CFR Part 72.

~~\_\_\_\_\_ "Federal implementation plan" means the plan, including any revision thereof, which has been promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.~~

"Federally enforceable" means ~~all limitations and conditions which are enforceable by the administrator,~~  
including the following:

~~\_\_\_\_\_ a. \_\_\_\_\_ Requirements approved by the administrator pursuant to the provisions of § 111 or  
§ 112 of the federal Clean Air Act;~~

~~\_\_\_\_\_ b. \_\_\_\_\_ Requirements in the State Implementation Plan;~~

~~\_\_\_\_\_ c. \_\_\_\_\_ Any permit requirements established pursuant to (i) 40 CFR 52.21 or (ii) this  
chapter, with the exception of terms and conditions established to address applicable state requirements; and~~

~~\_\_\_\_\_ d. \_\_\_\_\_ Any other applicable federal requirement.~~

all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are  
enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions  
include, but are not limited to the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and  
equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean  
Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a  
source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an approved implementation plan.

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review program permit issued under regulations approved by the EPA into the implementation plan.

6. Limitations and conditions that are part of a state operating permit issued under regulations approved by the EPA into the implementation plan as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

7. Limitations and conditions in a Virginia regulation or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112.

8. Individual consent agreements that the EPA has legal authority to create.

"Final permit" means the version of a permit issued by the board under this article that has completed all review procedures required by 9 VAC 5-80-270 and 9 VAC 5-80-290.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9 VAC 5-80-120.

"Hazardous air pollutant" means ~~any pollutant listed in § 112(b)(1) of the federal Clean Air Act~~ any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in subpart VV of 40 CFR Part 52 by the administrator under § 110 of the

federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Insignificant activity" means any emission unit listed in 9 VAC 5-80-720 A, any emissions unit that meets the emissions criteria described in 9 VAC 5-80-720 B, or any emissions unit that meets the size or production rate criteria in 9 VAC 5-80-720 C.

"Major source" means

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric, sulfuric, or nitric acid plants.

(10) Petroleum refineries.

(11) Lime plants.

(12) Phosphate rock processing plants.

(13) Coke oven batteries.

(14) Sulfur recovery plants.

(15) Carbon black plants (furnace process).

(16) Primary lead smelters.

(17) Fuel conversion plant.

(18) Sintering plants.

(19) Secondary metal production plants.

(20) Chemical process plants.

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(23) Taconite ore processing plants.

(24) Glass fiber processing plants.

(25) Charcoal production plants.

(26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(27) Any other stationary source category regulated under § 111 or § 112 of the federal Clean Air Act for which the administrator has made an affirmative determination under § 302(j) of the Act.

c. For ozone nonattainment areas, any stationary source with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or

"moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (NO<sub>x</sub> requirements for ozone nonattainment areas) do not apply.

d. For attainment areas in ozone transport regions, any stationary source with the potential to emit 50 tons per year or more of volatile organic compounds.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by improperly designed equipment, lack of or poor preventative maintenance, careless or improper operation, operator error, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with [Article 6 (9 VAC 5-80-1100 et seq.) 9 VAC 5-80-10 of Part I or] Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.), or Article 9 (9 VAC 5-80-2000 et seq.) of this part, promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"Permit" (unless the context suggests otherwise) means any permit or group of permits covering a source subject to this article that is issued, renewed, amended, or revised pursuant to this article.

"Permit modification" means a revision to a permit issued under this article that meets the requirements of 9 VAC 5-80-210 on minor permit modifications, 9 VAC 5-80-220 on group processing of minor permit modifications, or 9 VAC 5-80-230 on significant modifications.

"Permit revision" means any permit modification that meets the requirements of 9 VAC 5-80-210, 9 VAC 5-80-220 or 9 VAC 5-80-230 or any administrative permit amendment that meets the requirements of 9 VAC 5-80-200.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Proposed permit" means the version of a permit that the board proposes to issue and forwards to the administrator for review in compliance with 9 VAC 5-80-290.

"Regulated air pollutant" means any of the following:

- a. Nitrogen oxides or any volatile organic compound.
- b. Any pollutant for which an ambient air quality standard has been promulgated.
- c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.
- d. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.

e. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR Part 68.

f. Any pollutant subject to ~~a regulation adopted pursuant to a requirement of the Code of Virginia governing a specific subject or category of sources~~ an applicable state requirement included in a permit issued under this article as provided in 9 VAC 5-80-300.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Research and development facility" means all the following as applied to any stationary source:

a. The primary purpose of the source is the conduct of either (i) research and development into new products or processes or into new uses for existing products or processes or into refining and improving existing products or processes or (ii) basic research to provide for education or the general advancement of technology or knowledge.

b. The source is operated under the close supervision of technically trained personnel.

c. The source is not engaged in the manufacture of products ~~for commercial sale in any manner inconsistent with subdivision a (i) or (ii) of this definition.~~

An analytical laboratory that primarily supports a research and development facility is considered to be part of that facility.

"Responsible official" means one of the following:

a. For a business entity, such as a corporation, association or cooperative:

(1) The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the business entity, or

(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the board;

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

d. For affected sources:

(1) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and

(2) The designated representative or any other person specified in this definition for any other purposes under this article.

"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to ~~9 VAC 5-20-110~~ 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

~~"State implementation plan" means the plan, including any revision thereof, which has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.~~

"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9 VAC 5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9 VAC 5-20-21). At the request of the applicant, any research and development facility may be considered a separate stationary source from the manufacturing or other facility with which it is co-located.

"Title I modification" means any modification under Parts C and D of Title I or §§ 111(a)(4), 112(a)(5), or 112(g) of the federal Clean Air Act; under regulations promulgated by the U.S. Environmental Protection Agency thereunder or in § 61.07 of 40 CFR Part 61; or under regulations approved by the U.S. Environmental Protection Agency to meet such requirements.

9 VAC 5-80-70. General.

A. No permit may be issued pursuant to this article until the article has been approved by the administrator, whether full, interim, partial, for federal delegation purposes, or otherwise.

B. If requested in the application for a permit or permit renewal submitted pursuant to this article, the board may combine the requirements of and the permit for a source subject to ~~9 VAC 5-80-40~~ the state operating permit program with the requirements of and the permit for a source subject to this article provided the application contains the necessary information required for a permit under ~~9 VAC 5-80-40~~ the state operating permit program.

C. For the purpose of this article, the phrase "~~these regulations~~" "Regulations for the Control and Abatement of Air Pollution" means ~~the entire Regulations for the Control and Abatement of Air Pollution, 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.) through 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.).~~ For purposes of implementing and enforcing those provisions of this article associated with applicable federal requirements as well as those provisions of this article intended to implement Title V of the federal Clean Air Act, the phrase "~~these regulations~~" "Regulations for the Control and Abatement of Air Pollution" means only those provisions ~~of 9 VAC 5-10-10 et seq. through 9 VAC 5-80-10 et seq.~~ that have been approved by EPA as part of the ~~State Implementation Plan~~ implementation plan or otherwise have been approved by or found to be acceptable by EPA for the purpose of implementing requirements of the federal Clean Air Act. For the purpose of this article, terms and conditions relating to applicable federal requirements shall be derived only from provisions ~~of 9 VAC 5-10-10 et seq. through 9 VAC 5-80-10 et seq.~~ that qualify as applicable federal requirements.

9 VAC 5-80-80. Applications.

A. A single application is required identifying each emission unit subject to this article. The application shall be submitted according to the requirements of this section, 9 VAC 5-80-90, and procedures approved by the board. Where several units are included in one stationary source, a single application covering all units in the source shall be submitted. A separate application is required for each stationary source subject to this article.

B. For each stationary source, the owner shall submit a timely and complete permit application in accordance with subsections C and D of this section.

C. ~~Timely application.~~

1. The owner of a stationary source applying for a permit under this article for the first time shall submit an application within 12 months after the source becomes subject to this article, except that stationary sources not deferred under 9 VAC 5-80-50 D shall submit their applications on a schedule to be determined by the department but no later than 12 months following the effective date of approval of this article by the administrator, to include approval for federal delegation purposes.

2. ~~New source review.~~

a. The owner of a source subject to the requirements of ~~§ 112(g)(2) (construction, reconstruction or modification) of sources of hazardous air pollutants) of the federal Clean Air Act or to the provisions of 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter or 9 VAC 5-80-30~~ the new source review program shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this article would prohibit such construction or change in operation, the owner shall obtain a permit revision before commencing operation.

b. The owner of a source may file a complete application to obtain the permit or permit revision under this article on the same date the permit application is submitted under the requirements of ~~§ 112(g)(2)~~

~~of the federal Clean Air Act or under 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter or 9 VAC 5-80-30 the new source review program].~~

3. For purposes of permit renewal, the owner shall submit an application at least six months but no earlier than eighteen months prior to the date of permit expiration.

D. ~~Complete application.~~ The following requirements concerning the completeness of the permit application apply to sources subject to this article:

1. To be determined complete, an application shall contain all information required pursuant to 9 VAC 5-80-90.

2. Applications for permit revision or for permit reopening shall supply information required under 9 VAC 5-80-90 only if the information is related to the proposed change.

3. Within 60 days of receipt of the application, the board shall notify the applicant in writing either that the application is or is not complete. If the application is determined not to be complete, the board shall provide (i) a list of the deficiencies in the notice and (ii) a determination as to whether the application contains sufficient information to begin a review of the application.

4. If the board does not notify the applicant in writing within 60 days of receipt of the application, the application shall be deemed to be complete.

5. For minor permit modifications, a completeness determination shall not be required.

6. If, while processing an application that has been determined to be complete, the board finds that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

7. The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter or 9 VAC 5-80-30~~ the new source review program].

8. Upon notification by the board that the application is complete or after 60 days following receipt of the application by the board, the applicant shall submit three additional copies of the complete application to the board.

E. ~~Duty to supplement or correct application.~~

~~1.~~ Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

~~2.~~ An applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date a complete application was filed but prior to release of a draft permit.

F. ~~Application shield~~ The following requirements concerning the application shield apply to sources subject to this article.

1. If an applicant submits a timely and complete application for an initial permit or renewal under this section, the failure of the source to have a permit or the operation of the source without a permit shall not be a violation of this article until the board takes final action on the application under 9 VAC 5-80-150.

2. No source shall operate after the time that it is required to submit a timely and complete application under subsections C and D of this section for a renewal permit, except in compliance with a permit issued under this article.

3. If the source applies for a minor permit modification and wants to make the change proposed under the provisions of either 9 VAC 5-80-210 F or 9 VAC 5-80-220 E, the failure of the source to have a permit modification or the operation of the source without a permit modification shall not be a violation of this article until the board takes final action on the application under 9 VAC 5-80-150.

4. If the source notifies the board that it wants to make an operational flexibility permit change under 9 VAC 5-80-280 B, the failure of the source to have a permit modification or operation of the source without a permit modification for the permit change shall not be a violation of this article unless the board notifies the source that the change is not a permit change as specified in 9 VAC 5-80-280 B 1 a.

5. If an applicant submits a timely and complete application under this section for a permit renewal but the board fails to issue or deny the renewal permit before the end of the term of the previous permit, (i) the previous permit shall not expire until the renewal permit has been issued or denied and (ii) all the terms and conditions of the previous permit, including any permit shield granted pursuant to 9 VAC 5-80-140, shall remain in effect from the date the application is determined to be complete until the renewal permit is issued or denied.

6. The protection under subsections F 1 and F 5 (ii) of this section shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the applicant fails to submit by the deadline specified in writing by the board any additional information identified as being needed to process the application.

G. ~~Signatory and certification requirements.~~

~~1. Any application form, report, compliance certification, or other document required to be submitted to the board under this article shall be signed by a responsible official shall meet the requirements of 9 VAC 5-20-230.~~

~~\_\_\_\_\_ 2. \_\_\_\_\_ Any person signing a document required to be submitted to the board under this article shall make the following certification:~~

~~\_\_\_\_\_ "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."~~

9 VAC 5-80-90. Application information required.

- A. The board shall furnish application forms to applicants.
  
- B. Each application for a permit shall include, but not be limited to, the information listed in subsections C through K of this section.
  
- C. Identifying information as follows shall be included.
  - 1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.
  
  - 2. A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.
  
- D. Emissions-related information as follows shall be included.

1. All emissions of pollutants for which the source is major and all emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit with the following exceptions.

(1) Any emissions unit exempted from the requirements of this subsection because the emissions level or size of the unit is deemed to be insignificant under 9 VAC 5-80-720 B or C shall be listed in the permit application and identified as an insignificant activity. This requirement shall not apply to emissions units listed in 9 VAC 5-80-720 A.

(2) Regardless of the emissions units designated in 9 VAC 5-80-720 A or C or the emissions levels listed in 9 VAC 5-80-720 B, the emissions from any emissions unit shall be included in the permit application if the omission of those emissions units from the application would interfere with the determination of the applicability of this article, the determination or imposition of any applicable requirement, or the calculation of permit fees.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent quantifiable regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

2. Additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to Article 2 (9 VAC 5-80-310 et seq.) of this chapter as required by the board. Identification and description of all points of emissions described in subsection D 1 of this section in sufficient detail to establish the basis

for fees and applicability of requirements of ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act.

3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

4. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

7. Other information required by any applicable requirement (including information related to stack height limitations required under 9 VAC 5-40-20 I or 9 VAC 5-50-20 H).

8. Calculations on which the information in subsections D 1 through 7 of this section is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

E. Air pollution control requirements as follows shall be included.

1. Citation and description of all applicable requirements, including those covering activities deemed insignificant under Article 4 (9 VAC 5-80-710 et seq.) of this part.

2. Description of or reference to any applicable test method for determining compliance with each applicable requirement.

F. Additional information that may be necessary to implement and enforce other requirements of ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act or to determine the applicability of such requirements.

G. An explanation of any proposed exemptions from otherwise applicable requirements.

H. Additional information as determined to be necessary by the board to define alternative operating scenarios identified by the source pursuant to 9 VAC 5-80-110 J or to define permit terms and conditions implementing operational flexibility under 9 VAC 5-80-280.

I. Compliance plan as follows shall be included.

1. A description of the compliance status of the source with respect to all applicable requirements.

2. A description as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

c. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

3. A compliance schedule as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement or by the board if no specific requirement exists.

c. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or board order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

4. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

J. Compliance certification information as follows shall be included.

1. A certification of compliance with all applicable requirements by a responsible official or a plan and schedule to come into compliance or both as required by subsection I of this section.

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the board.

4. A statement indicating the source is in compliance with any applicable federal requirements concerning enhanced monitoring and compliance certification.

K. If applicable, a statement indicating that the source has complied with the applicable federal requirement to register a risk management plan under § 112(r)(7) of the federal Clean Air Act or, as required under subsection I of this section, has made a statement in the source's compliance plan that the source intends to comply with this applicable federal requirement and has set a compliance schedule for registering the plan.

L. Regardless of any other provision of this section, an application shall contain all information needed to determine or to impose any applicable requirement or to evaluate the fee amount required under the schedule approved pursuant to Article 2 (9 VAC 5-80-310 et seq.) of this chapter.

9 VAC 5-80-100. Emission caps.

A. The board may establish an emission cap for sources or emissions units applicable under this article when the applicant requests that a cap be established.

B. The criteria in subsections B 1 through B 5 of this section shall be met in establishing emission standards for emission caps to the extent necessary to assure that emissions levels are met permanently.

1. If an emissions unit was subject to emission standards prescribed in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution prior to the date the permit is issued, a standard covering the emissions unit and pollutants subject to the emission standards shall be incorporated into the permit issued under this article.

2. A permit issued under this article may also contain emission standards for emissions units or pollutants that were not subject to emission standards prescribed in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution prior to the issuance of the permit.

3. Each standard shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination thereof for each affected pollutant.

4. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued.

b. The emissions rate based on the potential to emit of the emissions unit.

5. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination thereof.

C. Using the significant modification procedures of 9 VAC 580-230, an emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subsections B 1 and B 4 of this section and provided the increased emission levels would not make the source subject to ~~[9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter or 9 VAC 5-80-30~~ the new source review program, as appropriate].

9 VAC 5-80-110. Permit content.

A. General information applies as follows.

1. For major sources subject to this article, the board shall include in the permit all applicable requirements for all emissions units in the major source ~~except those deemed insignificant in Article 4 (9 VAC 5-80-710 et seq.) of this chapter.~~

2. For any source other than a major source subject to this article, the board shall include in the permit all applicable requirements that apply to emissions units that cause the source to be subject to this article.

3. For all sources subject to this article, the board shall include in the permit applicable requirements that apply to fugitive emissions regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

4. Each permit issued under this article shall include the elements listed in subsections B through N of this section.

B. ~~Emission limitations and standards.~~

Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards:

1. The permit shall specify and reference applicable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

2. The permit shall specify and reference the origin of and authority for each term or condition and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

3. If applicable requirements contained in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution allow a determination of an alternative emission limit at a source, equivalent to that contained in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution, to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

C. ~~Equipment specifications and operating parameters~~ Each permit shall contain terms and conditions identifying equipment specifications and operating parameters in accordance with the following.

1. Each permit shall contain terms and conditions setting out the following elements identifying equipment specifications and operating parameters:

\_\_\_\_\_ 1. a. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

\_\_\_\_\_ 2. b. Specifications for air pollution control equipment installed or to be installed ~~and the circumstances under which such equipment shall be operated.~~

\_\_\_\_\_ 3. c. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved.

2. The information on any specification required in subsections C 1 a and b may be included in the permit for informational purposes only and does not form an enforceable term or condition of the permit except in the following cases:

a. The specification is an applicable federal requirement.

b. The specification is derived from and necessary to enforce an applicable federal requirement.

c. The operation of the source contrary to the specification would violate an applicable federal requirement.

d. The owner voluntarily takes the specification as a state enforceable term or condition of the permit pursuant to 9 VAC 5-80-300.

D. ~~Duration.~~

Each permit shall contain a condition setting out the expiration date, reflecting a fixed term of five years.

E. ~~Monitoring.~~

Each permit shall contain terms and conditions setting out the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods promulgated pursuant to § 504(b) or § 114(a)(3) of the federal Clean Air Act concerning compliance monitoring, including enhanced compliance monitoring. If more than one monitoring or testing requirement applies, the permit may specify a

streamlined set of monitoring or testing provisions provided the specific monitoring or testing is adequate to assure compliance at least to the same extent as the [applicable requirements relating to] monitoring or testing [applicable requirements] that are not included in the permit as a result of such streamlining.

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subsection F 1 a of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of subsection E 2 of this section.

3. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

F. Recordkeeping and reporting requirements apply as follows.

1. To meet the requirements of subsection E of this section with respect to recordkeeping, the permit shall contain terms and conditions setting out all applicable recordkeeping requirements and requiring, where applicable, the following:

a. Records of monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements.

(2) The date(s) analyses were performed.

(3) The company or entity that performed the analyses.

(4) The analytical techniques or methods used.

(5) The results of such analyses.

(6) The operating conditions existing at the time of sampling or measurement.

b. Retention of records of all monitoring data and support information for at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

2. To meet the requirements of subsection E of this section with respect to reporting, the permit shall contain terms and conditions setting out all applicable reporting requirements and requiring the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 9 VAC 5-80-80 G.

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The board shall define "prompt" in the permit condition in relation to (i) the degree and type of deviation likely to occur and (ii) the applicable requirements.

~~G. Enforcement.~~

Each permit shall contain terms and conditions with respect to enforcement that state the following:

1. If any condition, requirement or portion of the permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of the permit.

2. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the federal Clean Air Act or the Virginia Air Pollution Control Law or both and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. The permit may be modified, revoked, reopened, and reissued, or terminated for cause as specified in subsection L of this section, 9 VAC 5-80-240 and 9 VAC 5-80-260. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5. The permit does not convey any property rights of any sort, or any exclusive privilege.

6. The permittee shall furnish to the board, within a reasonable time, any information that the board may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the board copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the board along with a claim of confidentiality.

H. ~~Permit fees.~~

Each permit shall contain a condition setting out the requirement to pay permit fees consistent with the fee schedule approved pursuant to Article 2 (9 VAC 5-80-310 et seq.) of this chapter.

I. Emissions trading information as follows shall be included.

1. Each permit shall contain a condition with respect to emissions trading that states the following:

No permit revision shall be required, under any federally approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

2. Each permit shall contain the following terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases within the permitted facility, to the extent that ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution provide for trading such increases and decreases without a case-by-case approval of each emissions trade:

a. All terms and conditions required under this section except subsection N shall be included to determine compliance.

b. The permit shield described in 9 VAC 5-80-140 shall extend to all terms and conditions that allow such increases and decreases in emissions.

c. The owner shall meet all applicable requirements including the requirements of this article.

J. ~~Alternative operating scenarios.~~

Each permit shall contain terms and conditions setting out requirements with respect to reasonably anticipated operating scenarios when identified by the source in its application and approved by the board. Such requirements shall include but not be limited to the following:

1. Contemporaneously with making a change from one operating scenario to another, the source shall record in a log at the permitted facility a record of the scenario under which it is operating.
2. The permit shield described in 9 VAC 5-80-140 shall extend to all terms and conditions under each such operating scenario.
3. The terms and conditions of each such alternative scenario shall meet all applicable requirements including the requirements of this article.

K. ~~Compliance.~~

Consistent with subsections E and F of this section, each permit shall contain terms and conditions setting out the following requirements with respect to compliance:

1. Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required in a permit condition to be submitted to the board shall contain a certification by a responsible official that meets the requirements of 9 VAC 5-80-80 G.
2. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the owner shall allow the board to perform the following:
  - a. Enter upon the premises where the source is located or emissions-related activity is conducted, or where records must be kept under the terms and conditions of the permit.

b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.

c. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.

d. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

3. A schedule of compliance consistent with 9 VAC 5-80-90 I.

4. Progress reports consistent with an applicable schedule of compliance and 9 VAC 5-80-90 I to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the board. Such progress reports shall contain the following:

a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved.

b. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

5. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

a. The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the board) of submissions of compliance certifications.

b. In accordance with subsection E of this section, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

c. A requirement that the compliance certification include the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(1) The identification of each term or condition of the permit that is the basis of the certification.

(2) ~~The compliance status~~ identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under subsection E of this section. If necessary, the owner or operator shall also identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.

~~(3) Whether compliance was continuous or intermittent, and if not continuous, documentation of each incident of non-compliance~~ The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in 9 VAC 5-5-80-110 K 5 c (2). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred.

~~(4) Consistent with subsection E of this section, the method or methods used for determining the compliance status of the source at the time of certification and over the reporting period.~~

~~(5)~~ Such other facts as the board may require to determine the compliance status of the source.

d. All compliance certifications shall be submitted by the permittee to the administrator as well as to the board.

~~\_\_\_\_\_ e. Such additional requirements as may be specified pursuant to § 114(a)(3) and § 504(b) of the federal Clean Air Act.~~

6. Such other provisions as the board may require.

L. ~~Reopening.~~

Each permit shall contain terms and conditions setting out the following requirements with respect to reopening the permit prior to expiration:

1. The permit shall be reopened by the board if additional applicable federal requirements become applicable to a major source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to 9 VAC 5-80-80 F.

2. The permit shall be reopened if the board or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The permit shall be reopened if the administrator or the board determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

4. The permit shall not be reopened by the board if additional applicable state requirements become applicable to a major source prior to the expiration date established under subsection D of this section.

M. ~~Miscellaneous.~~

The permit shall contain terms and conditions pertaining to other requirements as may be necessary to ensure compliance with ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution, the Virginia Air Pollution Control Law and the federal Clean Air Act.

N. Federal enforceability requirements apply as follows.

1. All terms and conditions in a permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal Clean Air Act, except as provided in subsection N 2 of this section.

2. The board shall specifically designate as being only state-enforceable any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable federal requirements. Terms and conditions so designated are not subject to the requirements of 9 VAC 5-80-290 concerning review of proposed permits by EPA and draft permits by affected states.

3. The board ~~shall~~ may specifically designate as state enforceable any applicable state requirement that has been submitted to the administrator for review to be approved as part of the ~~State Implementation Plan~~ implementation plan and that has not yet been approved. The permit shall specify that the provision will become federally enforceable upon approval of the provision by the administrator and through an administrative permit amendment.

9 VAC 5-80-120. General permits.

A. Requirements for board issuance of a general permit apply as follows.

1. The board may issue a general permit covering a source category containing numerous similar sources that meet the following criteria:

a. All sources in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.

b. Sources shall not be subject to case-by-case standards or requirements.

c. Sources shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

2. Sources subject to a general permit shall comply with all requirements applicable to other permits issued under this article.

3. General permits shall (i) identify the criteria by which sources may qualify for the general permit and (ii) describe the process to use in applying for the general permit.

4. The board shall not issue a general permit until the requirements concerning notice and opportunity for public participation under 9 VAC 5-80-270 and affected state and EPA review under 9 VAC 5-80-290 have been met. However, requirements concerning content of the notice shall replace those specified in 9 VAC 5-80-270 C and shall include, but not be limited to, the following:

a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit.

b. The criteria to be used in determining which sources qualify for the general permit.

c. A brief description of the source category that the department believes qualifies for the general permit including, but not limited to, an estimate of the number of individual sources in the category.

d. A narrative statement of the estimated air quality impact contributed by the source category covered by the general permit including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used, if applicable.

e. A brief description of the application process to be used by sources to request coverage under the general permit.

f. A brief description of the comment procedures required by 9 VAC 5-80-270.

g. A brief description of the procedures to be used to request a hearing as required by 9 VAC 5-80-270 or the time and place of the public hearing if the board determines to hold a hearing under 9 VAC 5-80-270 E 9.

B. Application requirements for a general permit apply as follows.

1. Sources that would qualify for a general permit shall apply to the board for coverage under the terms of the general permit. Sources that do not qualify for a general permit shall apply for coverage under a permit issued under the other provisions of this article.

2. The application shall meet the requirements of this article and include all information necessary to determine qualification for and to assure compliance with the general permit.

3. Sources that become subject to the general permit after it is issued to other sources in the category addressed by the general permit shall file an application with the board using the application process described in

the general permit. The board shall issue the general permit to the source if it determines that the source meets the criteria set out in the general permit.

C. ~~Issuance~~ Conditions of issuance of a general permit apply as follows.

1. The board shall grant the conditions and terms of the general permit to sources that meet the criteria set out in the general permit covering the specific source category.

2. The issuance of a permit to a source covered by a general permit shall not require compliance with the public participation procedures under 9 VAC 5-80-270 and affected state and EPA review under 9 VAC 5-80-290.

3. A response to each general permit application may not be provided. The general permit may specify a reasonable time period after which a source that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Sources covered under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the source is covered by the general permit.

5. Provided the letter, certificate, summary or other document is located at the source, the source may not be required to have a copy of the general permit. In this case, a copy of the general permit shall be retained by the board or at the source's corporate headquarters in the case of franchise operations.

D. Enforcement conditions apply as follows.

1. Regardless of the permit shield provisions in 9 VAC 5-80-140, the source shall be subject to enforcement action under 9 VAC 5-80-260 for operation without a permit issued under this article if the source is later determined by the board or the administrator not to qualify for the conditions and terms of the general permit.

2. The act of granting or denying a request for authorization to operate under a general permit shall not be subject to judicial review.

9 VAC 5-80-130. Temporary sources.

A. The board may issue a single permit authorizing emissions from similar operations by the same owner at multiple temporary locations.

B. The operation shall be temporary and involve at least one change of location during the term of the permit.

C. Permits for temporary sources shall include the following:

1. Conditions that assure compliance with all applicable requirements at all authorized locations.

2. A condition that the owner shall notify the board not less than 15 days in advance of each change in location.

3. Conditions that ensure compliance with all other provisions of this article.

9 VAC 5-80-140. Permit shield.

A. The board shall expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with all applicable requirements in effect as of the date of permit issuance and as specifically identified in the permit.

B. The permit shield shall cover only the following:

1. Applicable requirements that are covered by terms and conditions of the permit.

2. Any other applicable requirement specifically identified as being not applicable to the source, provided that the permit includes that determination.

C. Nothing in this section or in any permit issued under this article shall alter or affect the following:

1. The provisions of § 303 of the federal Clean Air Act (emergency orders), including the authority of the administrator under that section.

2. The liability of an owner for any violation of applicable requirements prior to or at the time of permit issuance.

3. The ability to obtain information from a source by the (i) administrator pursuant to § 114 of the federal Clean Air Act (inspections, monitoring, and entry); (ii) board pursuant to § 10.1-1314 or § 10.1-1315 of the Virginia Air Pollution Control Law or (iii) department pursuant to § 10.1-1307.3 of the Virginia Air Pollution Control Law.

9 VAC 5-80-150. Action on permit application.

A. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

1. The board has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under 9 VAC 5-80-120.

2. Except for modifications qualifying for minor permit modification procedures under 9 VAC 5-80-210 or 9 VAC 5-80-220, the board has complied with the requirements for public participation under 9 VAC 5-80-270.

3. The board has complied with the requirements for notifying and responding to affected states under 9 VAC 5-80-290.

4. The conditions of the permit provide for compliance with all applicable requirements, the requirements of Article 2 (9 VAC 5-80-310 et seq.) of this chapter, and the requirements of this article.

5. The administrator has received a copy of the proposed permit and any notices required under 9 VAC 5-80-290 A and B and has not objected to issuance of the permit under 9 VAC 5-80-290 C within the time period specified therein.

B. The board shall take final action on each permit application (including a request for permit modification or renewal) no later than 18 months after a complete application is received by the board, with the following exceptions:

1. For sources not deferred under 9 VAC 5-80-50 D, one-third of the initial permits shall be issued in each of the three years following the administrator's approval of this article, to include approval for federal delegation purposes.

2. For permit revisions, as required by the provisions of 9 VAC 5-80-200, 9 VAC 5-80-210, 9 VAC 5-80-220 or 9 VAC 5-80-230.

C. Issuance of permits under this article shall not take precedence over or interfere with the issuance of preconstruction permits under ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter or 9 VAC 5-80-30 the new source review program~~.

D. The board shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The board shall send this statement to the administrator and to any other person who requests it.

E. Within five days after receipt of the issued permit, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the board upon request.

#### 9 VAC 5-80-160. Transfer of permits.

A. No person shall transfer a permit from one location to another, unless authorized under 9 VAC 5-80-130, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall comply with any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer and shall comply with the requirements of 9 VAC 5-80-200.

C. In the case of a name change of a stationary source, the owner shall comply with any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change and shall comply with the requirements of 9 VAC 5-80-200.

#### 9 VAC 5-80-170. Permit renewal and expiration.

A. Permits being renewed shall be subject to the same procedural requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance under this article.

B. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with 9 VAC 5-80-80.

C. If the board fails to act in a timely way on a permit renewal, the administrator may invoke his authority under § 505(e) of the federal Clean Air Act to terminate or revoke and reissue the permit.

9 VAC 5-80-180. Permanent shutdown for emissions trading.

~~\_\_\_\_\_A. The shutdown of an emissions unit is not creditable for purposes of emissions trading or exempt under 9 VAC 5-80-50 C 4 unless a decision concerning shutdown has been made pursuant to the pertinent provisions of this chapter, including subsections B through D of this section 9 VAC 5-20-220.~~

~~\_\_\_\_\_B. \_\_\_\_\_ Upon a final decision by the board that an emissions unit is shut down permanently, the board shall revoke any applicable permit by written notification to the owner and remove the unit from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the unit shall not commence operation without a permit being issued under the applicable new source review and operating permit provisions of this chapter.~~

~~\_\_\_\_\_C. \_\_\_\_\_ The final decision shall be rendered as follows:~~

~~\_\_\_\_\_1. \_\_\_\_\_ Upon a determination that the emissions unit has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the unit is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent, a projected date for restart up of the emissions unit and a request for a formal hearing if the owner wishes to exercise that right.~~

~~\_\_\_\_\_ 2. \_\_\_\_\_ If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested. If no hearing is requested, the decision to consider the shutdown permanent shall become final.~~

~~\_\_\_\_\_ D. \_\_\_\_\_ Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that an emissions unit is shutdown permanently prior to any final decision rendered under subsection C of this section.~~

9 VAC 5-80-190. Changes to permits.

A. ~~\_\_\_\_\_~~ Applicability.

~~\_\_\_\_\_ 1. \_\_\_\_\_~~ Changes to emissions units that pertain to applicable federal requirements at a source with a permit issued under this article shall be made as specified under subsections B through D of this section and 9 VAC 5-80-200 through 9 VAC 5-80-240.

~~\_\_\_\_\_ 2. \_\_\_\_\_~~ Changes to emissions units that pertain to applicable state requirements at a source with a permit issued under this article shall be made as specified under subsection E of this section.

~~\_\_\_\_\_ 3. \_\_\_\_\_~~ Changes to a permit issued under this article and during its five-year term that pertain to applicable federal requirements may be initiated by the permittee as specified in subsection B of this section or by the board or administrator as specified in subsection C of this section.

B. ~~\_\_\_\_\_~~ Changes The following requirements apply with respect to changes initiated by the permittee.

1. The permittee may initiate a change to a permit by requesting an administrative permit amendment, a minor permit modification or a significant permit modification. The requirements for these permit revisions can be found in 9 VAC 5-80-200 through 9 VAC 5-80-230.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. ~~Changes initiated by the administrator or the board.~~

The administrator or the board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-240.

D. ~~Permit term.~~

Changes to permits shall not be used to extend the term of the permit.

E. ~~Changes~~ The following changes apply with respect to changes at a source and applicable state requirements.

1. ~~Exemption from permit revision and reopening requirements.~~

Changes at a source that pertain only to applicable state requirements shall be exempt from the requirements of 9 VAC 5-80-200 through 9 VAC 5-80-240.

2. ~~Criteria for making the change.~~

The permittee may initiate a change pertaining only to applicable state requirements (i) if the change does not violate applicable requirements and (ii) if applicable, the requirements of [~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.)~~ of this chapter or 9 VAC 5-80-30 the new source review program] have been met.

3. Incorporation of permit terms and conditions into a permit issued under this article shall be as follows.

a. Permit terms and conditions pertaining only to applicable state requirements and issued under [~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter or 9 VAC 5-80-30~~ the new source review program] shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

b. Permit terms and conditions for changes to emissions units pertaining only to applicable state requirements and exempt from the requirements of [~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter or 9 VAC 5-80-30~~ the new source review program] shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

4. ~~Notification.~~

The source shall provide contemporaneous written notice to the board of the change. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable state requirement that would apply as a result of the change.

5. ~~Permit shield.~~

The change shall not qualify for the permit shield under 9 VAC 5-80-140.

9 VAC 5-80-200. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Requirement for more frequent monitoring or reporting by the permittee.

4. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-160 have been fulfilled.

5. Incorporation into the permit of the requirements of permits issued under ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter and 9 VAC 5-80-30~~ the new source review program when ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter and 9 VAC 5-80-30 meet~~ the new source review program meets] (i) procedural requirements substantially equivalent to the requirements of 9 VAC 5-80-270 and 9 VAC 5-80-290 that would be applicable to the change if it were subject to review as a permit modification, and (ii) compliance requirements substantially equivalent to those contained in 9 VAC 5-80-110.

6. Change in the enforceability status from state-only requirements to federally enforceable requirements for provisions that have been approved through rulemaking by the administrator to be a part of the ~~State Implementation Plan~~ implementation plan.

B. Administrative permit amendment procedures shall be required for and limited to the following.

1. The board shall take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board shall incorporate the changes without providing notice to the public or affected states under 9 VAC 5-80-270 and 9 VAC 5-80-290. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The board shall submit a copy of the revised permit to the administrator.

4. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

C. The board shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield provisions of 9 VAC 5-80-140 for amendments made pursuant to subsection A 5 of this section.

9 VAC 5-80-210. Minor permit modifications.

A. Minor permit modification procedures shall be used only for those permit modifications that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not Title I modifications; and

6. Are not required to be processed as a significant modification under 9 VAC 5-80-230 or as an administrative permit amendment under 9 VAC 5-80-200.

B. Notwithstanding subsection A of this section and 9 VAC 5-80-220 A, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution or a federally-approved program.

C. ~~Application.~~

An application requesting the use of minor permit modification procedures shall meet the requirements of 9 VAC 5-80-90 for the modification proposed and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9 VAC 5-80-80 G, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.

D. ~~Public participation and EPA and affected state notification.~~

~~\_\_\_\_\_~~ 1. Within five working days of receipt of a permit modification application that meets the requirements of subsection C of this section, the board shall meet its obligation under 9 VAC 5-80-290 A 1 and B 1 to notify the administrator and affected states of the requested permit modification. The board shall promptly send any notice required under 9 VAC 5-80-290 B 2 to the administrator.

~~\_\_\_\_\_~~ 2. The public participation requirements of 9 VAC 5-80-270 shall not extend to minor permit modifications.

E. ~~Timetable~~ The timetable for issuance of permit modifications shall be follows.

1. The board may not issue a final permit modification until after the administrator's 45-day review period or until the administrator has notified the board that he will not object to issuance of the permit modification, whichever occurs first, although the board can approve the permit modification prior to that time.

2. Within 90 days of receipt by the board of an application under minor permit modification procedures or 15 days after the end of the 45-day review period under 9 VAC 5-80-290 C, whichever is later, the board shall do one of the following:

- a. Issue the permit modification as proposed.
- b. Deny the permit modification application.

c. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures.

d. Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by 9 VAC 5-80-290 A.

F. ~~Ability of owner to make change~~ The following requirements apply with respect to the ability of an owner to make minor permit modification changes.

1. The owner may make the change proposed in the minor permit modification application immediately after the application is filed.

2. After the change under subsection F 1 of this section is made, and until the board takes any of the actions specified in subsection E of this section, the source shall comply with both the applicable federal requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subsection F 2 of this section, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

G. ~~Permit shield.~~

The permit shield under 9 VAC 5-80-140 shall not extend to minor permit modifications.

9 VAC 5-80-220. Group processing of minor permit modifications.

A. ~~Criteria.~~

Group processing of modifications may be used only for those permit modifications that meet both of the following:

1. Permit modifications that meet the criteria for minor permit modification procedures under 9 VAC 5-80-210 A.
2. Permit modifications that collectively are below the threshold level as follows: 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source in 9 VAC 5-80-60, or five tons per year, whichever is least.

B. ~~Application.~~

An application requesting the use of group processing procedures shall meet the requirements of 9 VAC 5-80-90 for the proposed modifications and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.
2. A suggested draft permit prepared by the applicant.
3. Certification by a responsible official, consistent with 9 VAC 5-80-80 G, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.
4. A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subsection A 2 of this section.

5. Certification, consistent with 9 VAC 5-80-80 G, that the source has notified the administrator of the proposed modification. Such notification need contain only a brief description of the requested modification.

6. Completed forms for the board to use to notify the administrator and affected states as required under 9 VAC 5-80-290.

C. ~~Public participation and EPA and affected state notification.~~

~~1.~~ On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of the pending applications for the source equals or exceeds the threshold level set under subsection A 2 of this section, whichever is earlier, the board promptly shall meet its obligation under 9 VAC 5-80-290 A 1 and B 1 to notify the administrator and affected states of the requested permit modifications. The board shall send any notice required under 9 VAC 5-80-290 B 2 to the administrator.

~~2.~~ The public participation requirements of 9 VAC 5-80-270 shall not extend to group processing of minor permit modifications.

D. ~~Timetable for issuance.~~

The provisions of 9 VAC 5-80-210 E shall apply to modifications eligible for group processing, except that the board shall take one of the actions specified in 9 VAC 5-80-210 E 1 through E 4 ~~2~~ within 180 days of receipt of the application or 15 days after the end of the 45-day review period under 9 VAC 5-80-290 C, whichever is later.

E. ~~Ability of owner to make change.~~

The provisions of 9 VAC 5-80-210 F shall apply to modifications eligible for group processing.

F. ~~Permit shield.~~

The permit shield under 9 VAC 5-80-140 shall not extend to minor permit modifications.

9 VAC 5-80-230. Significant modification procedures.

A. ~~Criteria.~~

~~1.~~ Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications under 9 VAC 5-80-210 or 9 VAC 5-80-220 or as administrative amendments under 9 VAC 5-80-200.

~~2.~~ Significant modification procedures shall be used for those permit modifications that:

~~a. 1.~~ Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

~~b. 2.~~ Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts made under 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) or 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.), or a visibility or increment analysis carried out under this chapter.

~~c. 3.~~ Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

\_\_\_\_\_ ~~(1) a.~~ A federally enforceable emissions cap assumed to avoid classification as a Title I modification.

\_\_\_\_\_ ~~(2) b.~~ An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act (early reduction of hazardous air pollutants).

B. \_\_\_\_\_ ~~Application.~~

An application for a significant permit modification shall meet the requirements of 9 VAC 5-80-80 and 9 VAC 5-80-90 for permit issuance and renewal for the modification proposed and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.
2. A suggested draft permit prepared by the applicant.
3. Completed forms for the board to use to notify the administrator and affected states as required under 9 VAC 5-80-290.

C. \_\_\_\_\_ ~~EPA and affected state notification.~~

The provisions of 9 VAC 5-80-290 shall be carried out for significant permit modifications in the same manner as they would be for initial permit issuance and renewal.

D. \_\_\_\_\_ ~~Public participation.~~

The provisions of 9 VAC 5-80-270 shall apply to applications made under this section.

E. ~~Timetable for issuance.~~

The board shall take final action on significant permit modifications within nine months after receipt of a complete application.

F. ~~Ability of owner to make change.~~

The owner shall not make the change applied for in the significant modification application until the modification is approved by the board under subsection E of this section.

G. ~~Permit shield.~~

The provisions of 9 VAC 5-80-140 shall apply to changes made under this section.

9 VAC 5-80-240. Reopening for cause.

A. A permit shall be reopened and revised under any of the conditions stated in 9 VAC 5-80-110 L.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

D. ~~Reopenings~~ Provisions for reopenings for cause by EPA shall be as follows.

1. If the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subsection A of this section, the administrator shall notify the board and the permittee of such finding in writing.

2. The board shall, within 90 days after receipt of such notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the board must require the permittee to submit additional information.

3. The administrator shall review the proposed determination from the board within 90 days of receipt.

4. The board shall have 90 days from receipt of an objection by the administrator to resolve any objection that he makes and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

5. If the board fails to submit a proposed determination pursuant to subsection D 2 of this section or fails to resolve any objection pursuant to subsection D 4 of this section, the administrator shall terminate, modify, or revoke and reissue the permit after taking the following actions:

a. Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in subsections D 1 through D 4 of this section.

b. Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

9 VAC 5-80-250. Malfunction.

A. ~~Effect of a malfunction.~~

A malfunction constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of subsection B of this section are met.

~~B. Affirmative defense of malfunction.~~

The affirmative defense of malfunction shall be demonstrated by the permittee through properly signed, contemporaneous operating logs, or other relevant evidence that show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.

2. The permitted facility was at the time being properly operated.

3. During the period of the malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.

~~4. For malfunctions that occurred for one hour or more, the permittee submitted to the board by the deadlines established in subsections B 4 a and B 4 b of this section a notice and written statement containing a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notice fulfills the requirement of 9 VAC 5-80-110 F 2 b to report promptly deviations from permit requirements.~~

~~a. A notice of the malfunction by facsimile transmission, telephone or telegraph as soon as practicable but no later than four daytime business hours of the time when the emission limitations were exceeded due to the malfunction.~~

~~b. A written statement describing the malfunction no later than two weeks following the day the malfunction occurred. The permittee notified the board of the malfunction within two working days following the~~

time when the emission limitations were exceeded due to the malfunction. This notification shall include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notification may be delivered either orally or in writing. The notification may be delivered by electronic mail, facsimile transmission, telephone, telegraph, or any other method that allows the permittee to comply with the deadline. This notification fulfills the requirements of 9 VAC 5-80-110 F 2 b to report promptly deviations from permit requirements. This notification does not release the permittee from the malfunction reporting requirements under 9 VAC 5-20-180 C.

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

9 VAC 5-80-260. Enforcement.

A. General provisions shall be as follows.

1. Pursuant to § 10.1-1322, failure to comply with any condition of a permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. A permit may be revoked or terminated prior to its expiration date if the owner does any of the following:

a. Knowingly makes material misstatements in the permit application or any amendments thereto.

b. Violates, fails, neglects or refuses to comply with (i) the terms or conditions of the permit, (ii) any applicable requirements, or (iii) the applicable provisions of this article.

3. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation or termination contained in subsection A 2 of this section or for any other violations of ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution.

B. Penalties shall be as follows.

1. An owner who violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1316 of the Virginia Air Pollution Control Law.

2. Any owner who knowingly violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

3. Any owner who knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

C. ~~Appeals~~ Provisions for appeals shall be as follows.

1. The board shall notify the applicant in writing of its decision, with its reasons, to suspend, revoke or terminate a permit.

2. Appeal from any decision of the board under subsection C 1 of this section may be taken pursuant to ~~9 VAC 5-20-90~~ Part VIII (9 VAC 5-170-190 et seq.) of 9 VAC 5 Chapter 170, § 10.1-1318 of the Virginia Air Pollution Control Law, and the Administrative Process Act.

D. The existence of a permit under this article shall constitute a defense to a violation of any applicable requirement if the permit contains a condition providing the permit shield as specified in 9 VAC 5-80-140 and if the requirements of 9 VAC 5-80-140 have been met. The existence of a permit shield condition shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of other governmental entities having jurisdiction. Otherwise, the existence of a permit under this article shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

E. ~~Inspections~~ Provisions for inspections and right of entry shall be as follows.

1. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law and 9 VAC 5-20-150, has the authority to require that air pollution records and reports be made available upon request and to require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of the permits issued under this article.

2. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law, has the authority, upon presenting appropriate credentials to the owner, to do the following:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in the Commonwealth; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the board or its representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the board shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection.

F. ~~Other enforcement mechanisms.~~

The board may enforce permits issued under this article through the use of other enforcement mechanisms such as consent orders and special orders. The procedures for using these mechanisms are contained in 9 VAC 5-20-20 and 9 VAC 5-20-30 and in §§ 10.1-1307 D, 10.1-1309, and 10.1-1309.1 of the Virginia Air Pollution Control Law.

9 VAC 5-80-270. Public participation.

A. ~~Required public comment and public notice.~~

Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30 days. The board shall notify the public using the procedures in subsection B of this section.

B. ~~Notification.~~

The board shall notify the public of the draft permit or draft permit modification (i) by advertisement in a newspaper of general circulation in the area where the source is located and (ii) through a notice to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section.

C. ~~Content~~ Provisions for the content of the public notice and availability of information shall be as follows.

1. The notice shall include, but not be limited to, the following:
  - a. The source name, address and description of specific location.

- b. The name and address of the permittee.
- c. The name and address of the regional office processing the permit.
- d. The activity or activities for which the permit action is sought.
- e. The emissions change that would result from the permit issuance or modification.
- f. The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the draft permit or draft permit modification, the application, and all relevant supporting materials, including the compliance plan.
- g. A brief description of the comment procedures required by this section.
- h. A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the board determines to hold a hearing under subsection E 3 of this section.

2. Information on the permit application (exclusive of confidential information under 9 VAC 5-20-150), as well as the draft permit or draft permit modification, shall be available for public inspection during the entire public comment period at the regional office.

D. ~~Affected states review.~~

The board shall provide such notice and opportunity for participation by affected states as is provided for by 9 VAC 5-80-290.

E. ~~Opportunity Provisions for public hearing shall be as follows.~~

1. The board shall provide an opportunity for a public hearing as described in subsections E 2 through E 6 of this section.

2. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the draft permit or draft permit modification. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

- a. The name, mailing address and telephone number of the requester.
- b. The names and addresses of all persons for whom the requester is acting as a representative.
- c. The reason why a hearing is requested, including the air quality concern that forms the basis for the request.
- d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including information on how the operation of the facility under consideration affects the requester.

3. The board shall review all requests for public hearing filed as required under subsection E 2 of this section and, within 30 calendar days following the expiration of the public comment period, shall grant a public hearing if it finds both of the following:

- a. There is significant public interest in the air quality issues raised by the permit application in question.

b. There are substantial, disputed air quality issues relevant to the permit application in question.

4. The board shall notify by mail the applicant and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain the basis for the decision to grant or deny a public hearing. If the public hearing is granted, the notice shall contain a description of procedures for the public hearing.

5. If the board decides to hold a public hearing, the hearing shall be scheduled at least 30 and no later than 60 days after mailing the notification required in subsection E 4 of this section.

6. The procedures for notification to the public and availability of information used for the public comment period as provided in subsection C of this section shall also be followed for the public hearing. The hearing shall be held in the affected air quality control region.

7. As an alternative to the requirements of subsections E 1 through E 6 of this section, the board may hold a public hearing if an applicant requests that a public hearing be held or if, prior to the public comment period, the board determines that the conditions in subsection E 3 a and b of this section pertain to the permit application in question.

8. The board may hold a public hearing for more than one draft permit or draft permit modification if the location for the public hearing is appropriate for the sources under consideration and if the public hearing time expected for each draft permit or draft permit modification will provide sufficient time for public concerns to be heard.

9. Written comments shall be accepted by the board for at least 15 days after the hearing.

F. ~~Public comment record.~~

~~1.~~ 1. The board shall keep ~~two records of public participation as follows:~~

~~\_\_\_\_\_ a. \_\_\_\_\_~~ A a record of the commenters. ~~and a~~

~~\_\_\_\_\_ b. \_\_\_\_\_~~ A record of the issues raised during the public participation process so that the administrator may fulfill his obligation under § 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted.

~~\_\_\_\_\_ 2. \_\_\_\_\_~~ Such records shall be made available to the public upon request.

9 VAC 5-80-280. Operational flexibility.

A. The board shall allow, under conditions specified in this section, operational flexibility changes at a source that do not require a revision to be made to the permit in order for the changes to occur. Such changes shall be classified as follows: (i) those that contravene an express permit term, or (ii) those that are not addressed or prohibited by the permit. The conditions under which the board shall allow these changes to be made are specified in subsections B and C of this section, respectively.

~~B. \_\_\_\_\_~~ ~~Changes~~ The following requirements apply with respect to changes that contravene an express permit term.

~~1. \_\_\_\_\_~~ ~~General~~ The following general requirements apply.

a. The board shall allow a change at a stationary source that changes a permit condition with the exception of the following:

(1) A Title I modification.

(2) A change that would exceed the emissions allowable under the permit.

(3) A change that would violate applicable requirements.

(4) A change that would contravene federally or state enforceable permit terms or conditions or both that are monitoring (including test methods), recordkeeping, reporting, compliance schedule dates, or compliance certification requirements.

b. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

c. The owner, board and the administrator shall attach the notice described in subsection B 1 b of this section to their copy of the relevant permit.

d. The permit shield under 9 VAC 5-80-140 shall not extend to any change made pursuant to subdivision B 1 of this section.

2. ~~\_\_\_\_\_ Emission~~ The following requirements apply with respect to emission trades within permitted facilities provided for in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution.

a. With the exception of the changes listed in subsection B 1 a of this section, the board shall allow permitted sources to trade increases and decreases in emissions within the permitted facility (i) where ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution provide for such emissions trades without requiring a permit revision and (ii) where the permit does not already provide for such emissions trading.

b. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include such information as may be

required by the provision in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution authorizing the emissions trade, including at a minimum the name and location of the facility, when the proposed change will occur, a description of the proposed change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution and which provide for the emissions trade.

c. The permit shield described in 9 VAC 5-80-140 shall not extend to any change made under subsection B 2 of this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution.

3. Emission trades within stationary sources to comply with an emissions cap in the permit.

a. If a permit applicant requests it, the board shall issue permits that contain terms and conditions, including all terms required under 9 VAC 5-80-110 to determine compliance, allowing for the trading of emissions increases and decreases within the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable federal requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure that the emissions trades are quantifiable and enforceable. The board shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

b. The board shall not allow a change to be made under subsection B 3 of this section if it is a change listed in subsection B 1 of this section.

c. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

d. The permit shield under 9 VAC 5-80-140 shall extend to terms and conditions that allow such increases and decreases in emissions.

C. ~~Changes~~ The following requirements apply with respect to changes that are not addressed or prohibited by the permit.

1. The board shall allow the owner to make changes that are not addressed or prohibited by the permit unless the changes are Title I modifications or are subject to requirements under Title IV.

2. Each change shall meet all applicable requirements and shall not violate any existing permit term or condition which is based on applicable federal requirements.

3. Sources shall provide contemporaneous written notice to the board and the administrator of each change, except for changes to emissions units deemed insignificant and listed in 9 VAC 5-80-720 A. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable federal requirement that would apply as a result of the change.

4. The change shall not qualify for the permit shield under 9 VAC 5-80-140.

5. The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable federal requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.

9 VAC 5-80-290. Permit review by EPA and affected states.

A. ~~Transmission~~ The following requirements apply with respect to transmission of information to the administrator.

1. The board shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit issued under this article.

2. The board shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require to ascertain whether the Virginia program complies with the requirements of the federal Clean Air Act or of 40 CFR Part 70.

B. ~~Review~~ The following requirements apply with respect to review by affected states.

1. The board shall give notice of each draft permit to any affected state on or before the time that the board provides this notice to the public under 9 VAC 5-80-270, except to the extent that 9 VAC 5-80-210 or 9 VAC 5-80-220 requires the timing of the notice to be different.

2. The board, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under 9 VAC 5-80-210 or 9 VAC 5-80-220), shall notify the administrator and any affected state in writing of any refusal by the board to accept recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the reasons the board will not accept a recommendation. The board shall not be obligated to accept recommendations that are not based on applicable federal requirements or the requirements of this article.

C. ~~EPA objection~~ The following requirements apply with regard to objections by EPA.

1. No permit for which an application must be transmitted to the administrator under subsection A of this section shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

2. Any objection by the administrator under subsection C 1 of this section shall include a statement of the reasons for the objection and a description of the terms and conditions that the permit must include to respond to the objection. The administrator shall provide the permit applicant a copy of the objection.

3. Failure of the board to do any of the following also shall constitute grounds for an objection:

- a. Comply with subsection A or B of this section or both.
- b. Submit any information necessary to review adequately the proposed permit.
- c. Process the permit under the public comment procedures in 9 VAC 5-80-270 except for minor permit modifications.

4. If, within 90 days after the date of an objection under subsection C 1 of this section, the board fails to revise and submit a proposed permit in response to the objection, the administrator will issue or deny the permit in accordance with the requirements of 40 CFR Part 71.

D. ~~Public~~ The following requirements apply with respect to public petitions to the administrator.

1. If the administrator does not object in writing under subsection C of this section, any person may petition the administrator within 60 days after the expiration of the 45-day review period for the administrator to make such objection.

2. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in 9 VAC 5-80-270, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

3. If the administrator objects to the permit as a result of a petition filed under subsection D 1 of this section, the board shall not issue the permit until the objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection by the administrator.

4. If the board has issued a permit prior to receipt of an objection by the administrator under subsection D 1 of this section, the administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 9 VAC 5-80-240 D 4 or D 5 a and b except in unusual circumstances, and the board may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

E. ~~Prohibition on default issuance.~~

No permit (including a permit renewal or modification) shall be issued by the board until affected states and the administrator have had an opportunity to review the proposed permit as required under this section.

9 VAC 5-80-300. Voluntary inclusions of additional state-only requirements as applicable state requirements in the permit.

A. Upon the request of an applicant, any requirement of ~~these regulations not included in the definition of applicable requirement~~ of any regulation of the board (other than any requirement that is a federal applicable requirement) may be included as an applicable state requirement in a permit issued under this article.

B. If the applicant chooses to make a request under subsection A of this section, the provisions of this article pertaining to applicable state requirements shall apply.

C. The request under subsection A of this section shall be made by including the citation and description of any applicable requirement not defined as such in this article in the permit application submitted to the board under 9 VAC 5-80-90 E.

~~9 VAC 5-80-305 Review and confirmation of this article by board.~~

~~\_\_\_\_\_ A. \_\_\_\_\_ Within three years following the approval by the U.S. Environmental Protection Agency of this article, the department shall provide the board with an analysis to include (i) an assessment of the effectiveness of this article, (ii) the status of any specific federal requirements and the identification of any provisions more stringent than the federal requirements, (iii) the federal approval status of this article and (iv) an assessment of the need for continuation of this article.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ Upon review of the department's analysis, the board shall confirm (i) the continuation of this article, (ii) the repeal of this article or (iii) the need to amend this article. If a decision is made in either of the latter two cases, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

## 9 VAC 5 CHAPTER 80.

### PERMITS FOR STATIONARY SOURCES.

#### ARTICLE 2.

#### Permit Program Fees for Stationary Sources [~~Rule 8-6~~].

9 VAC 5-80-310. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to the following stationary sources:

1. Any major source.
2. Any source, including an area source, subject to a standard, limitation, or other requirement under § 111 of the federal Clean Air Act.
3. Any source, including an area source, subject to a standard, limitation, or other requirement under § 112 of the federal Clean Air Act.
4. Any affected source.
5. Any other source subject to the permit requirements of Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this chapter.
6. Any source that would be subject to the permit requirements of Article 1 (9 VAC 5-80-50 et seq.) of this chapter 80 in the absence of a permit issued under 9 VAC 5-80-40.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

1. All sources and source categories that would be subject to this article solely because they are subject to the provisions of 40 CFR Part 60, Subpart AAA (standards of performance for new residential wood heaters), as prescribed in Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50.

2. All sources and source categories that would be subject to this article solely because they are subject to the provisions of 40 CFR Part 61, Subpart M, § 61.145 (national emission standard for hazardous air pollutants for asbestos, standard for demolition and renovation), as prescribed in Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.

3. Any source issued a permit under [~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter or 9 VAC 5-80-30~~ the new source review program] that began initial operation during the calendar year preceding the year in which the annual permit program fee is assessed.

4. That portion of emissions in excess of 4,000 tons per year of any regulated air pollutant emitted by any source otherwise subject to an annual permit program fee.

5. During the years 1995 through 1999 inclusive, any affected source under § 404 of the federal Clean Air Act (phase I sulfur dioxide requirements).

6. Any emissions unit within a stationary source subject to this article that is identified as being an insignificant activity in Article 4 (9 VAC 5-80-710 et seq.) of this chapter.

7. All sources and source categories that would be subject to this article solely because they are subject to regulations or requirements under § 112(r) of the federal Clean Air Act.

8. Any source deferred by the provisions of subsection D of this section provided the source is not part of a major source.

D. Sources shall be deferred from initial applicability as follows.

1. Area sources subject to this article under subsection A 2 or subsection A 3 of this section shall be deferred from the obligation to pay fees under this article except as follows.

a. In cases for which EPA has promulgated a standard under § 111 or § 112 and has declared that the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

b. In cases for which EPA has promulgated a standard under § 111 or § 112 after July 21, 1992, and has failed to declare whether the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

2. The following sources shall not be deferred from the obligation to pay fees under this article:

a. Major sources.

b. Solid waste incineration units subject to the provisions of 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) and 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) as adopted pursuant to § 129 (e) of the federal Clean Air Act.

3. Any source deferred under subsection D 1 of this section may apply for a permit under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of 9 VAC 5 Chapter 80. If the source applies for a permit, the source shall be subject to this article and shall pay fees accordingly.

E. Particulate matter emissions shall be used to determine the applicability of this article to major sources or to determine actual emissions only if particulate matter (PM<sub>10</sub>) emissions cannot be quantified in a manner acceptable to the board.

9 VAC 5-80-320. Definitions.

A. For the purpose of this article and subsequent amendments or any orders issued by the board, the words or phrases shall have the meaning given them in subsection C of this section.

B. All words and phrases not defined in subsection C of this section shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Actual emissions" means the actual rate of emissions in tons per year of any regulated air pollutant emitted from a source subject to this article over the preceding calendar year. Actual emissions may be calculated according to any method acceptable to the department provided such calculation takes into account the source's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Any regulated pollutant which could be classed in more than one category shall be classed in only one category.

"Affected source" means a source that includes one or more affected units.

"Affected unit" means a unit that is subject to any federal acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Parts 72, 73, 75, 77 or 78.

"Area source" means any stationary source that is not a major source. For purposes of this section, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Hazardous air pollutant" means ~~any pollutant listed in § 112(b)(1) of the federal Clean Air Act~~ air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Major source" means:

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any

hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(1) Coal cleaning plants (with thermal dryers);

(2) Kraft pulp mills;

(3) Portland cement plants;

(4) Primary zinc smelters;

(5) Iron and steel mills;

(6) Primary aluminum ore reduction plants;

- (7) Primary copper smelters;
- (8) Municipal incinerators capable of charging more than 250 tons  
of refuse per day;
- (9) Hydrofluoric, sulfuric, or nitric acid plants;
- (10) Petroleum refineries;
- (11) Lime plants;
- (12) Phosphate rock processing plants;
- (13) Coke oven batteries;
- (14) Sulfur recovery plants;
- (15) Carbon black plants (furnace process);
- (16) Primary lead smelters;
- (17) Fuel conversion plant;
- (18) Sintering plants;

(19) Secondary metal production plants;

(20) Chemical process plants;

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(27) Any other stationary source category regulated under § 111 or § 112 of the federal Clean Air Act for which the Administrator has made an affirmative decision under § 302(j) of the Act.

c. For ozone nonattainment areas, any stationary source with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (NO<sub>x</sub> requirements for ozone nonattainment areas) do not apply.

d. For attainment areas in ozone transport regions, any stationary source with the potential to emit 50 tons per year or more of volatile organic compounds.

"Permit program costs" means all reasonable (direct and indirect) costs required to develop, administer, and enforce the permit program; and to develop and administer the Small Business Technical and Environmental Compliance Assistance Program established pursuant to the provisions of § 10.1-1323 of the Code of Virginia.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Regulated air pollutant" means any of the following:

- a. Nitrogen oxides or any volatile organic compound.
- b. Any pollutant for which an ambient air quality standard has been promulgated except carbon monoxide.
- c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.
- d. Any pollutant subject to a standard promulgated under § 112 (hazardous air pollutants) or other requirements established under § 112 of the federal Clean Air Act, particularly §§ 112(b), 112(d), 112(g)(2), 112(j), and 112(r); except that any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under § 112(r) of the federal Clean Air Act shall be exempt from this article.

"Research and development facility" means all the following as applied to any stationary source:

- a. The primary purpose of the source is the conduct of either (i) research and development into new products or processes or into new uses for existing products or processes or (ii) basic research to provide for education or the general advancement of technology or knowledge.

b. The source is operated under the close supervision of technically trained personnel.

c. The source is not engaged in the manufacture of products ~~for commercial sale~~ in any manner inconsistent with a (i) or (ii) of this definition.

An analytical laboratory that primarily supports a research and development facility is considered to be part of that facility.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same persons (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., if they have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9 VAC 5-20-21). Any research and development facility shall be considered a separate stationary source from the manufacturing or other facility with which it is co-located.

9 VAC 5-80-330. General.

A. The owner of any source subject to this article shall pay an annual permit program fee.

B. Permit program fees collected pursuant to this article for sources subject to Article 1 (9 VAC 5-80-50 et seq.) of this chapter shall not be used for any purpose other than as provided in Title V of the federal Clean Air Act and associated regulations and policies.

C. The owner shall be exempt from paying the annual permit program fee ~~in any year for which the fee is assessed at \$300 or less~~ for any year during which the total actual emissions are 10 tons or less.

9 VAC 5-80-340. Annual permit program fee calculation.

A. The annual permit program fee shall not exceed the base year amount as specified in § 10.1-1322 B of the Virginia Air Pollution Control Law and shall be adjusted annually by the Consumer Price Index as provided in § 10.1-1322 B of the Virginia Air Pollution Control Law.

1. The annual permit program fee shall be increased (consistent with the need to cover reasonable costs) each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the U.S. Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

2. The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

B. The annual permit program fee described in subsection A of this section and the amount billed to the owner as provided in subsection A of 9 VAC 5-80-350 for a given year shall be calculated in accordance with the following formulae:

$$B = (A)(F)$$

$$F = X(1 + \Delta \text{CPI})$$

$$\Delta \text{CPI} = \frac{\text{CPI} - 122.15}{122.15}$$

where:

B = the amount billed to the owner during the year after the year in which the actual emissions occurred, expressed in dollars

A = actual emissions covered by permit fees, expressed in tons

F = the maximum adjusted fee per ton for the calendar year in which the actual emissions occurred, expressed in dollars per ton

X = 25, expressed in dollars per ton

$\Delta$  CPI = the difference between the CPI and 122.15 (the average of the Consumer Price Index for all-urban consumers for the 12-month period ending on August 31, 1989)

CPI = the average of the Consumer Price Index for all-urban consumers for the 12-month period ending on August 31 of the year in which the emissions actually occurred, expressed as a percentage

C. The actual emissions covered by the permit program fees for the preceding year shall be calculated by the owner and submitted to the department by April 15 of each year. The calculations and final amount of emissions are subject to verification and final determination by the department.

D. If the assessment of the annual permit program fee calculated in accordance with subsections A, B, and C of this section results in a total amount of fee revenue in excess of the amount necessary to fund the permit program costs, a lesser annual permit program fee shall instead be calculated and assessed according to the formula specified in subsection E of this section. Any adjustments made to the annual permit program fee shall be within the constraints of 40 CFR § 70.9 and § 10.1-1322 of the Virginia Air Pollution Control Law.

E. The lesser annual permit program fee shall be calculated according to the following formula: estimated permit program costs [  $\{ \pm \}$  ] estimated actual emissions = lesser annual permit program fee. The estimated permit program costs and estimated actual emissions shall be

determined from the data specified in subsections E 1 and E 2 of this section, incorporating any anticipated adjustments to the data.

1. The current permit program costs shall be determined from the most recent available annual expenditure record of the amount spent by the department on permit program costs.

2. The current actual emissions shall be determined from the most recent available annual emissions inventory of the actual emissions for each regulated pollutant subject to fees from all sources subject to the annual permit program fee.

9 VAC 5-80-350. Annual permit program fee payment.

A. Upon determining that the owner owes an annual permit program fee, the department shall mail a bill for the fee to that owner no later than August 1, or in the case of the initial bill no later than 60 days after federal program approval, unless the governor determines that fees are needed earlier for Virginia to maintain primacy over the program, as provided for in § 10.1322 B of the State Air Pollution Control Law.

B. Within 30 days following the date of the postmark on the bill, the owner shall respond in one of the following ways:

1. The owner may pay the fee in full. ~~The fee shall be paid by check or money order made payable to "Department of Environmental Quality" and mailed to the address specified by the department.~~

2. ~~——~~The owner may make a written request to the department to authorize an alternative payment schedule. The deadline for payment of the fee shall be held in abeyance pending the department's response. The owner may file a request that the fee amount be revised if he can document that the emissions estimate on which the fee was based is in error. This request shall include appropriate source identification data, the revised emissions estimate, the revised fee amount, adequate supporting documentation, and other information as the board may require. The owner shall file the request with the appropriate regional office in a form acceptable to the board. If the department approves the request, the revised fee amount shall be paid in full within 30 days of the date of rejection.

C. The fee shall be paid by check or money order made payable to the "Treasurer of Virginia" and mailed to the address specified by the department. Failure of the owner to respond within 90 days following the date of the postmark on the bill in one of the two ways specified in subsection B of this section shall be grounds to institute a collection action against the owner by the Attorney General or to initiate appropriate enforcement action as provided in the Virginia Air Pollution Control Law.

~~9 VAC 5-80-355. Review and confirmation of this article by board.~~

~~——~~ A. ~~Within three years following the approval by the U.S. Environmental Protection Agency of this article, the department shall provide the board with an analysis to include (i) an assessment of the effectiveness of this article, (ii) the status of any specific federal requirements and~~

~~the identification of any provisions more stringent than the federal requirements, (iii) the federal approval status of this article and (iv) an assessment of the need for continuation of this article.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ Upon review of the department's analysis, the board shall confirm (i) the continuation of this article, (ii) the repeal of this article or (iii) the need to amend this article. If a decision is made in either of the latter two cases, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

9 VAC 5 CHAPTER 80.

PERMITS FOR STATIONARY SOURCES.

ARTICLE 3.

Acid Rain Operating Permits ~~[(Rule 8-7)].~~

9 VAC 5-80-360. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to any affected source that has an affected unit under the provisions of 9 VAC 5-80-380.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

1. Any new unit exempted under 9 VAC 5-80-390.
2. Any affected unit exempted under 9 VAC 5-80-400.

3. Any emissions unit that is determined to be shutdown under the provisions of ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, 9 VAC 5-80-30, 9 VAC 5-80-40, or 9 VAC 5-80-540 (permanent shutdown for emissions trading)~~ 9 VAC 5-20-220.

D. Regardless of the exemptions provided in this section, permits shall be required of owners who circumvent the requirements of this article by causing or allowing a pattern of ownership or development of a source which, except for the pattern of ownership or development, would otherwise require a permit.

~~E. The provisions of 9 VAC 5-80-440 concerning application requirements shall not apply to insignificant activities designated in 9 VAC 5-80-720 with the exception of the requirements of 9 VAC 5-80-440 D 1 and 9 VAC 5-80-710. Particulate matter emissions shall be used to determine the applicability of this article to major sources only if particulate matter (PM<sub>10</sub>) emissions cannot be quantified in a manner acceptable to the board.~~

9 VAC 5-80-370. Definitions.

As used in this article and related permits and orders issued by the board, all words and terms not defined herein shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless the context clearly indicates otherwise; otherwise, words and terms shall have the following meaning:

"Acid rain compliance option" means one of the methods of compliance used by an affected unit under the acid rain program as described in a compliance plan submitted and approved in accordance with 9 VAC 5-80-450 or 40 CFR Part 76.

"Acid rain compliance plan" means the document submitted for an affected source in accordance with 9 VAC 5-80-430 specifying the method or methods (including one or more acid rain compliance options under 9 VAC 5-80-450 or 40 CFR Part 76) by which each affected unit at the source will meet the applicable acid rain emissions limitation and acid rain emissions reduction requirements.

"Acid rain emissions limitation" means:

1. For the purposes of sulfur dioxide emissions:

a. The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under §§ 404(a)(1), (a)(3), and (h) of the federal Clean Air Act, or the basic Phase II allowance allocations authorized by the administrator to be allocated to an affected unit for use in a calendar year, or the allowances authorized to be allocated to an opt-in source under § 410 of the federal Clean Air Act for use in a calendar year;

b. As adjusted:

(1) By allowances allocated by the administrator pursuant to § 403, § 405(a)(2), (a)(3), (b)(2), (c)(4), (d)(3), and (h)(2), and § 406 of the federal Clean Air Act;

(2) By allowances allocated by the administrator pursuant to Subpart D of 40 CFR Part 72; and thereafter

(3) By allowance transfers to or from the compliance subaccount for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in 40 CFR § 73.35, after deductions and other adjustments are made pursuant to 40 CFR § 73.34(c); and

2. For purposes of nitrogen oxides emissions, the applicable limitation established by 40 CFR Part 76, as modified by an acid rain permit application submitted to the board, and an acid rain permit issued by the board, in accordance with 40 CFR Part 76.

"Acid rain emissions reduction requirement" means a requirement under the acid rain program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.

"Acid rain permit or permit" means the legally binding written document, or portion of such document, issued by the board (following an opportunity for appeal pursuant to 40 CFR Part 78 or the Administrative Process Act), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

"Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the federal Clean Air Act, 40 CFR Parts ~~72~~, 73, 74, 75, 76, 77, and 78, ~~regulations implementing § 410 of the federal Clean Air Act~~, and this article.

"Acid rain program regulations" means regulations implementing Title IV of the federal Clean Air Act, including 40 CFR Parts ~~72~~, 73, 74, 75, 76, 77, and 78, ~~regulations implementing § 410 of the federal Clean Air Act~~, and this article.

"Actual sulfur dioxide emissions rate" means the annual average sulfur dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; provided that, if the unit is listed in the NADB, the "1985 actual sulfur dioxide emissions rate" for the unit shall be the rate specified by the administrator in the NADB under the data field "SO2RTE."

"Administrative record" means the written documentation that supports the issuance or denial of the acid rain permit and that contains the following:

1. The permit application and any supporting or supplemental data submitted by the designated representative.
2. The draft permit.
3. The statement of basis.

4. Copies of any documents cited in the statement of basis and any other documents relied on by the board in issuing or denying the draft permit (including any records of discussions or conferences with owners, operators, or the designated representative of affected units at the source or interested persons regarding the draft permit), or, for any such documents that are readily available, a list of those documents and a statement of their location.

5. Copies of all written public comments submitted on the draft permit or denial of a draft permit.

6. The record of any public hearing on the draft permit or denial of a draft permit.

7. The acid rain permit.

8. Any response to public comments submitted on the draft permit or denial of a draft permit and copies of any documents cited in the response and any other documents relied on by the board to issue or deny the acid rain permit, or, for any such documents that are readily available, a list of those documents and a statement of their location.

"Affected source" means a source that includes one or more affected units.

"Affected states" means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation. Affected units are specifically designated in 9 VAC 5-80-380.

"Allocate or allocation" means the initial crediting of an allowance by the administrator to an allowance tracking system unit account or general account.

"Allowable emissions" means the emission rates of an affected source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate or hours of operation of both) and the most stringent of the following:

1. Applicable emission standards.
2. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.
3. Any other applicable emission limitation, including those with a future compliance date.

"Allowance" means an authorization by the administrator under the acid rain program to emit up to one ton of sulfur dioxide during or after a specified calendar year.

"Allowance deduction," or "deduct" (when referring to allowances) means the permanent withdrawal of allowances by the administrator from an allowance tracking system compliance subaccount or future year subaccount, to account for the number of the tons of sulfur dioxide emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in 40 CFR Part 75, or for any other allowance surrender obligations of the acid rain program.

"Allowances held or hold allowances" means the allowances recorded by the administrator, or submitted to the administrator for recordation in accordance with 40 CFR § 73.50, in an allowance tracking system account.

"Allowance tracking system" means the acid rain program system by which the administrator allocates, records, deducts, and tracks allowances.

"Allowance tracking system account" means an account in the allowance tracking system established by the administrator for purposes of allocating, holding, transferring, and using allowances.

"Allowance transfer deadline" means midnight of January 30 or, if January 30 is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected unit's compliance subaccount for the purposes of meeting the unit's acid rain emissions limitation requirements for sulfur dioxide for the previous calendar year.

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

1. Any standard or other requirement provided for in the ~~State Implementation Plan or the Federal Implementation Plan~~ implementation plan, including any source-specific provisions such as consent agreements or orders.

2. Any term or condition of any preconstruction permit issued pursuant to the new source review program or of any ~~[federal]~~ operating permit issued pursuant to ~~9 VAC 5-80-390~~ the state operating permit program, except for terms or conditions derived from applicable state requirements ~~or from any requirement of these regulations~~ Regulations for the Control and Abatement of Air Pollution not included in the definition of applicable requirement.

3. Any standard or other requirement prescribed under ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution, particularly the provisions of 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.), or 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.), adopted pursuant to requirements of the federal Clean Air Act or under § 111, § 112 or § 129 of the federal Clean Air Act.

4. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

5. Any standard or other requirement of the acid rain program under Title IV of the federal Clean Air Act or the acid rain program regulations.

6. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act or ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution.

7. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

8. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

9. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

10. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

"Applicable requirement" means any applicable federal requirement or any applicable state requirement included in a permit issued under this article as provided in 9 VAC 5-80-700.

"Applicable state requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future-effective compliance dates):

1. Any standard or other requirement prescribed by any regulation ~~adopted pursuant to a specific requirement of the Code of Virginia governing a specific subject or category of sources of the board~~ [that is not included in the definition of applicable federal requirement].

2. Any regulatory provision or definition directly associated with or related to any of the ~~[specific]~~ state requirements listed in this definition.

"Authorized account representative" means a responsible natural person who is authorized, in accordance with 40 CFR Part 73, to transfer and otherwise dispose of allowances held in an allowance tracking system general account; or, in the case of a unit account, the designated representative of the owners and operators of the affected unit.

"Basic Phase II allowance allocations" means:

1. For calendar years 2000 through 2009 inclusive, allocations of allowances made by the administrator pursuant to § 403 (sulfur dioxide allowance program for existing and new units) and §§ 405(b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j) (Phase II sulfur dioxide requirements) of the federal Clean Air Act.

2. For each calendar year beginning in 2010, allocations of allowances made by the administrator pursuant to § 403 (sulfur dioxide allowance program for existing and new units) and §§ 405(b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j) (Phase II sulfur dioxide requirements) of the federal Clean Air Act.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or any other medium.

"Certificate of representation" means the completed and signed submission required by 40 CFR § 72.20, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources

authorized to represent the owners and operators of such source or sources and of the affected units at such source or sources with regard to matters under the acid rain program.

"Certifying official" means:

1. For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;
2. For partnership or sole proprietorship, a general partner or the proprietor, respectively; and
3. For a local government entity or state, federal, or other public agency, either a principal executive officer or ranking elected official.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388-92 "Standard Classification of Coals by Rank" (see 9 VAC 5-20-21).

"Coal-derived fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquified or gasified coal, washed coal, chemically cleaned coal, coal-oil mixtures, and coke).

"Coal-fired" means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), alone or in combination with any other fuel, where:

1. For purposes of 40 CFR Part 75 (continuous emissions monitoring), a unit is "coal-fired" independent of the percentage of coal or coal-derived fuel consumed in any calendar year (expressed in mmBtu); and

2. For all other purposes under the acid rain program ~~(including for calculating allowance allocations pursuant to 40 CFR Part 73 and applicability of the requirements of 40 CFR Part 76), except for purposes of applying 40 CFR Part 76,~~ a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); provided that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMFUEL."

"Cogeneration unit" means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

"Commence commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.

"Commence construction" means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

"Commence operation" means to have begun any mechanical, chemical, or electronic process, including start-up of an emissions control technology or emissions monitor or of a unit's combustion chamber.

"Common stack" means the exhaust of emissions from two or more units through a single flue.

"Complete application" means an application that contains all the information required pursuant to 9 VAC 5-80-430 and 9 VAC 5-80-440 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the board from requesting or accepting additional information.

"Compliance certification" means a submission to the administrator or board, as appropriate, that is required by the acid rain program regulations to report ~~either or both of the following:~~

\_\_\_\_\_ 1. ~~An an~~ affected source or an affected unit's compliance or non-compliance with a provision of the acid rain program and that is signed and verified by the designated representative in accordance with ~~Subpart B~~ Subpart B and I of 40 CFR Part 72, 9 VAC 5-80-470 and 9 VAC 5-80-490 P, and the acid rain program regulations.

\_\_\_\_\_ 2. ~~An affected source or an emissions unit's compliance or non-compliance with any applicable requirement and that is signed and verified by the responsible official in accordance with 9 VAC 5-80-430 G.~~

"Compliance plan" means the document submitted for an affected source in accordance with 9 VAC 5-80-430 specifying the method or methods by which each emissions unit at the source will meet applicable requirements.

"Compliance subaccount" means the subaccount in an affected unit's allowance tracking system account, established pursuant to 40 CFR § 73.31(a) or (b), in which are held, from the date that allowances for the current calendar year are recorded under 40 CFR § 73.34(a) until December 31, allowances available for use by the unit in the current calendar year and, after December 31 until the date that deductions are made under 40 CFR § 73.35(b), allowances available for use by the unit in the preceding calendar year, for the purpose of meeting the unit's acid rain emissions limitation for sulfur dioxide.

"Compliance use date" means the first calendar year for which an allowance may be used for purposes of meeting a unit's acid rain emissions limitation for sulfur dioxide.

"Construction" means fabrication, erection, or installation of a unit or any portion of a unit.

"Customer" means a purchaser of electricity not for the purpose of retransmission or resale. For generating rural electrical cooperatives, the customers of the distribution cooperatives served by the generating cooperative will be considered customers of the generating cooperative.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source or by the owners and operators of a combustion source or process source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this article, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program. ~~Whenever the term "designated representative" is used in this article, the term shall be construed to include the alternate designated representative listed in the certificate of representation in accordance with 40 CFR §§ 72.22 and 72.24. The designated representative may not be the responsible official with regard to the requirements of this article that do not pertain to the acid rain program.~~

"Diesel fuel" means a low sulfur fuel oil of grades 1-D or 2-D, as defined by the American Society for Testing and Materials standard ASTM ~~D975-94~~ D975-91, "Standard Specification for Diesel Fuel Oils" (see 9 VAC 5-20-21), grades 1-GT or 2-GT, as defined by ASTM D2990-90a, "Standard Specification for Gas Turbine Fuel Oils," or grades 1 or 2, as defined by ASTM D396-90, "Standard Specifications for Fuel Oils" (incorporated by reference in 40 CFR Part 72.13).

"Direct public utility ownership" means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.

"Draft permit or draft acid rain permit" means the version of a permit, or the acid rain portion of ~~an~~ a federal operating permit, for which the board offers public participation under 9 VAC 5-80-670 or affected state review under 9 VAC 5-80-690.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the designated representative and as determined by the administrator, in accordance with the emissions monitoring requirements of 40 CFR Part 75.

"Emissions allowable under the permit" means a federally and state enforceable or state-only enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of an affected source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in this article or 40 CFR Part 72.

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means:

1. Any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the acid rain emissions limitation for sulfur dioxide for the unit; ~~or~~ and
2. Any tonnage of nitrogen oxide emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the acid rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.

"Existing unit" means a unit (including a unit subject to ~~40 CFR Part 60 or~~ § 111 of the federal Clean Air Act) that commenced commercial operation before November 15, 1990 and that on or after November 15, 1990 served a generator with a nameplate capacity of greater than 25 MWe. "Existing unit" does not include simple combustion turbines or any unit that on or after November 15, 1990 served only generators with a nameplate capacity of 25 MWe or less. Any "existing unit" that is modified, reconstructed, or repowered after November 15, 1990 shall continue to be an "existing unit."

"Facility" means any institutional, commercial, or industrial structure, installation, plant, source, or building.

~~\_\_\_\_\_ "Federal implementation plan" means the plan, including any revision thereof, which has been promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.~~

"Federal operating permit" means a permit issued under this article, Article 1 (9 VAC 5-80-50 et seq.) of this chapter, 40 CFR Part 72, or any other regulation implementing Title V of the federal Clean Air Act.

"Federal Power Act" means 16 USC § 791a et seq.

"Federally enforceable" means ~~all limitations and conditions which are enforceable by the administrator, including the following:~~

~~\_\_\_\_\_ 1. \_\_\_\_\_ Requirements approved by the administrator pursuant to the provisions of § 111 or § 112 of the federal Clean Air Act;~~

~~\_\_\_\_\_ 2. \_\_\_\_\_ Requirements in the State Implementation Plan;~~

~~\_\_\_\_\_ 3. \_\_\_\_\_ Any permit requirements established pursuant to (i) 40 CFR § 52.21 or (ii) this chapter, with the exception of terms and conditions established to address applicable state requirements; and~~

~~\_\_\_\_\_ 4. \_\_\_\_\_ Any other applicable federal requirement.~~

all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an approved implementation plan.

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review program permit issued under regulations approved by the EPA into the implementation plan.

6. Limitations and conditions that are part of a state operating permit issued under regulations approved by the EPA into the implementation plan as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

7. Limitations and conditions in a Virginia regulation or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112.

8. Individual consent agreements that the EPA has legal authority to create.

"Final permit" means the version of a permit issued by the board under this article that has completed all review procedures required by 9 VAC 5-80-670 and 9 VAC 5-80-690.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year (expressed in mmBtu).

"Fuel oil" means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) as defined by the American Society for Testing and Materials in ASTM D396-92, "Standard Specification for Fuel Oils" (see 9 VAC 5-20-21), and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state; provided that for purposes of monitoring requirements, "fuel oil" shall be limited to the petroleum-based fuels for which applicable ASTM methods are specified in Appendices D, E, or F of 40 CFR Part 75.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

"Gas-fired" means ~~the combustion of natural gas, or a coal-derived gaseous fuel with a sulfur content no greater than natural gas, for at least 90% of the average annual heat input during the previous three calendar years and for at least 85% of the annual heat input in each of those calendar years; and any fuel other than coal or any other coal-derived fuel for the remaining heat input, if any. ;~~

1. The combustion of:

a. Natural gas or other gaseous fuel (including coal-derived gaseous fuel), for at least 90% of the unit's average annual heat input during the previous three calendar years and for at least 85% of the annual heat input in each of those calendar years; and

b. Any fuel other than coal or coal-derived fuel (other than coal-derived gaseous fuel) for the remaining heat input, if any; provided that for purposes of 40 CFR Part 75, any fuel used other than natural gas shall be limited to:

(1) Gaseous fuels containing no more sulfur than natural gas; or

(2) Fuel oil.

2. For purposes of 40 CFR Part 75, a unit may initially qualify as gas-fired under the following circumstances:

a. If the designated representative provides fuel usage data for the unit for the three calendar years immediately prior to submission of the monitoring plan, and if the unit's fuel usage is projected to change on or before January 1, 1995, the designated representative submits a demonstration satisfactory to the administrator that the unit will qualify as gas-fired under the first sentence of this definition using the years 1995 through 1997 as the three calendar year period; or

b. If a unit does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan, the designated representative submits:

(1) The unit's designated fuel usage;

(2) Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992;

(3) The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years; and

(4) Demonstration satisfactory to the administrator that the unit will qualify as gas-fired under the first sentence of this definition using those three consecutive calendar years as the three calendar year period.

"General account" means an allowance tracking system account that is not a unit account.

"Generator" means a device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).

"Generator output capacity" means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.

"Hazardous air pollutant" means ~~any pollutant listed in § 112(b)(1) of the federal Clean Air Act~~ any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Heat input" means the product (expressed in mmBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in mass of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Insignificant activity" means any emission unit listed in 9 VAC 5-80-720 A, any emissions unit that meets the emissions criteria described in 9 VAC 5-80-720 B, or any emissions unit that meets the size or production rate criteria in 9 VAC 5-80-720 C.

"Independent power production facility" means a source that:

1. Is nonrecourse project-financed, as defined by the Secretary of Energy at 10 CFR Part 715;

2. Is used for the generation of electricity, 80% or more of which is sold at wholesale; and

3. Is a new unit required to hold allowances under Title IV of the federal Clean Air Act;

\_\_\_\_\_ 4. ~~Provided that~~ but only if direct public utility ownership of the equipment comprising the facility does not exceed 50%.

"Insignificant activity" means any emissions unit listed in 9 VAC 5-80-720 A, any emissions unit that meets the emissions criteria described in 9 VAC 5-80-720 B, or any emission unit that meets the size or production rate criteria in 9 VAC 5-80-720 C. An emissions unit is not an insignificant activity if it has any applicable requirements unless those requirements apply identically to all emissions units at the facility.

"Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

1. For the life of the unit;

2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

3. For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events

beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by improperly designed equipment, poor maintenance, careless or improper operation, operator error, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"Nameplate capacity" means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.

"National allowance data base or NADB" means the data base established by the administrator under § 402(4)(C) of the federal Clean Air Act.

"Natural gas" means a naturally occurring fluid mixture of hydrocarbons ~~containing little or no sulfur~~ (e.g., methane, ethane, or propane) containing 1 grain or less hydrogen sulfide per 100 standard cubic feet, and 20 grains or less total sulfur per 100 standard cubic feet, produced in geological formations beneath the Earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure ~~conditions~~ under ordinary conditions.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with 9 VAC 5-80-10 [of Part I or Article 7 (9 VAC 5-80-1400 et seq.)] Article 8 (9 VAC 5-80-1700 et seq.) ~~of this part~~, or ~~9 VAC 5-80-30~~ Article 9 (9 VAC 5-80-2000 et seq.) of this part, promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) ~~and~~ 173 (relating to permits in nonattainment areas) ~~,~~ and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"New unit" means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

"Nonrecourse project-financed" means when being financed by any debt, such debt is secured by the assets financed and the revenues received by the facility being financed including, but not limited to, part or all of the revenues received under one or more agreements for the sale of the electric output from the facility, and which neither an electric utility with a retail service territory, nor a public utility as defined by § 201(e) of the Federal Power Act, as amended, 16 U.S.C. § 824(e), if any of its facilities are financed with general credit, is obligated to repay in whole or in part. A commitment to contribute equity or the contribution of equity to a facility by an electric utility shall not be considered an obligation of such utility to repay the debt of a facility. The existence of limited guarantees, commitments to pay for cost overruns, indemnity provisions, or other similar undertakings or assurances by the facility's owners or other project participants shall not disqualify a facility from being "nonrecourse project-financed" as long as, at the time of the financing for the facility, the borrower is obligated to make repayment of the term debt from revenues generated by the facility, rather than from other sources of funds. Projects that are 100% equity financed are also considered "nonrecourse project-financed" for purposes of § 416(a)(2)(B) of the federal Clean Air Act.

"Offset plan" means a plan pursuant to 40 CFR Part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.

"Oil-fired" means ~~the~~ :

1. The combustion of fuel oil for more than 10% of the average annual heat input during the previous three calendar years or for more than 15% of the annual heat input in any one of those calendar years; and any solid, liquid, or gaseous fuel (including coal-derived gaseous fuel), other than coal or any other coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), for the remaining heat input, if any; provided that for purposes of the monitoring exceptions of 40 CFR Part 75, the supplemental any fuel used in addition to other than fuel oil, if any, shall be limited to gaseous fuels, other than a coal-derived fuel containing no more sulfur than natural gas.

2. For purposes of 40 CFR Part 75, a unit that does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan may initially qualify as oil-fired if the designated representative submits:

a. Unit design fuel usage;

b. The unit's designed fuel usage;

c. Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992;

d. The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years; and

e. A demonstration satisfactory to the administrator that the unit will qualify as oil-fired under the first sentence of this definition using those three consecutive calendar years as the three calendar year period.

~~—————"Operating permit" means a permit issued under this article, Article 1 (9 VAC 5-80-50 et seq.) of this chapter, 40 CFR Part 72, or any other regulation implementing Title V of the federal Clean Air Act.~~

"Owner," with respect to affected units, combustion sources, or process sources, means any of the following persons:

1. Any holder of any portion of the legal or equitable title in an affected unit, a combustion source, or a process source; or

2. Any holder of a leasehold interest in an affected unit, a combustion source, or a process source; or

3. Any purchaser of power from an affected unit, a combustion source, or a process source under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit; or

4. With respect to any allowance tracking system general account, any person identified in the submission required by 40 CFR § 73.31(c) that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

"Owner or operator" means any person who is an owner or who operates, controls, or supervises an affected unit ~~or~~ affected source, combustion source, or process source, and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit ~~or~~ affected source, combustion source, or process source.

"Permit" (unless the context suggests otherwise) means any permit or group of permits covering a source subject to this article that is issued, renewed, amended, or revised pursuant to this article.

"Permit modification" means a revision to a permit issued under this article that meets the requirements of 9 VAC 5-80-570 on minor permit modifications, 9 VAC 5-80-580 on group processing of minor permit modifications, or 9 VAC 5-80-590 on significant modifications.

"Permit revision" means any permit modification that meets the requirements of 9 VAC 5-80-570, 9 VAC 5-80-580, or 9 VAC 5-80-590 or any administrative permit amendment that meets the requirements of 9 VAC 5-80-560.

"Permit revision for affected units" means a permit modification, fast track modification, administrative permit amendment for affected units, or automatic permit amendment, as provided in 9 VAC 5-80-600 through 9 VAC 5-80-630.

"Phase II" means the acid rain program period beginning January 1, 2000, and continuing into the future thereafter.

"Potential electrical output capacity" means the MWe capacity rating for the units which shall be equal to 33% of the maximum design heat input capacity of the steam generating unit, as calculated according to Appendix D of 40 CFR Part 72.

"Potential to emit" means the maximum capacity of an affected source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Power distribution system" means the portion of an electricity grid owned or operated by a utility that is dedicated to delivering electric energy to customers.

"Power purchase commitment" means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

1. A power sales agreement;
2. A state regulatory authority order requiring a utility to (i) enter into a power sales agreement with the facility; (ii) purchase from the facility; or (iii) enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power;
3. A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source executed within the time frame established by the terms of the letter of intent but no later than November 15,

~~1992~~ 1993 or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source executed on or before November 15, ~~1992~~ 1993; or

4. A utility competitive bid solicitation that has resulted in the selection of the qualifying facility ~~of~~ or independent power production facility as the winning bidder.

"Power sales agreement" means a legally binding agreement between a qualifying facility, independent power production facility or firm associated with such facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

"Primary fuel or primary fuel supply" means the main fuel type (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

"Proposed permit" means the version of a permit that the board proposes to issue and forwards to the administrator for review in compliance with 9 VAC 5-80-690.

"Qualifying facility" means a "qualifying small power production facility" within the meaning of § 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of § 3(18)(B) of the Federal Power Act.

"Qualifying power purchase commitment" means a power purchase commitment in effect as of November 15, 1990 without regard to changes to that commitment so long as:

1. The identity of the electric output purchaser, or the identity of the steam purchaser and the location of the facility, remain unchanged as of the date the facility commences commercial operation; and

2. The terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the acid rain program to be shifted to the purchaser.

"Qualifying repowering technology" means:

1. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; or

2. Any oil- or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

"Receive or receipt of" means the date the administrator or the board comes into possession of information or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the information or correspondence, by the administrator or the board in the regular course of business.

"Recordation, record, or recorded" means, with regard to allowances, the transfer of allowances by the administrator from one allowance tracking system account or subaccount to another.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.
2. Any pollutant for which an ambient air quality standard has been promulgated.
3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.

4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.

5. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR Part 68.

6. Any pollutant subject to ~~a regulation adopted pursuant to a specific requirement of the Code of Virginia governing a specific subject or category of sources~~ an applicable state requirement included in a permit issued under this article as provided in 9 VAC 5-80-300.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association or cooperative:

a. The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the business entity, or

b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(2) The authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the board; or

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

4. For affected sources:

a. The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and

b. The designated representative or any other person specified in this definition for any other purposes under this article or 40 CFR Part 70.

"Schedule of compliance" means an enforceable sequence of actions, measures, or operations designed to achieve or maintain compliance, or correct non-compliance, with an applicable requirement of the acid rain program, including any applicable acid rain permit requirement.

"Secretary of Energy" means the Secretary of the United States Department of Energy or the Secretary's duly authorized representative.

"Simple combustion turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined

cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.

"Solid waste incinerator" means a source as defined in § 129(g)(1) of the federal Clean Air Act.

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the federal Clean Air Act. For purposes of § 502(c) of the federal Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

"Stack" means a structure that includes one or more flues and the housing for the flues.

"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to ~~9 VAC 5-20-110~~ 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

~~\_\_\_\_\_ "State implementation plan" means the plan, including any revision thereof, which has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.~~

"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9 VAC 5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;

2. By United States Postal Service ~~certified mail with the official postmark or, if service is by the administrator or the board, by any other mail service by the United States Postal Service;~~ or

3. By other equivalent means ~~with an equivalent time and date mark used in the regular course of business to indicate the date~~ of dispatch or transmission and ~~a record of prompt~~ delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Title I modification" means any modification under Parts C and D of Title I or §§ 111(a)(4), 112(a)(5), or 112(G) of the federal Clean Air Act; under regulations promulgated by the U.S. Environmental Protection Agency thereunder or in § 61.07 of 40 CFR Part 61; or under regulations approved by the U.S. Environmental Protection Agency to meet such requirements.

"Ton or tonnage" means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with 40 CFR Part 75, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not to equal any ton.

"Total planned net output capacity" means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990.

"Total installed net output capacity" shall be the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

"Unit" means a fossil fuel-fired combustion device.

"Unit account" means an allowance tracking system account, established by the administrator for an affected unit pursuant to 40 CFR § 73.31 (a) or (b).

"Utility" means any person that sells electricity.

"Utility competitive bid solicitation" means a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility, or new independent power production facility, may be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

"Utility regulatory authority" means an authority, board, commission, or other entity (limited to the local-, state-, or federal-level, whenever so specified) responsible for overseeing the business operations of utilities located within its jurisdiction, including, but not limited to, utility rates and charges to customers.

"Utility unit" means a unit owned or operated by a utility:

1. That serves a generator in any state that produces electricity for sale, or
2. That during 1985, served a generator in any state that produced electricity for sale.
3. Notwithstanding paragraphs a and b of this definition, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990 is not a utility unit for purposes of the acid rain program.
4. Notwithstanding paragraphs a and b of this definition, a unit that cogenerates steam and electricity is not a utility unit for purposes of the acid rain program, unless the unit is constructed for the purpose of

supplying, or commences construction after November 15, 1990 and supplies, more than one-third of its potential electrical output capacity and more than 25 MWe output to any power distribution system for sale.

9 VAC 5-80-380. Affected units.

A. Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the acid rain program:

1. A unit listed in Table 1 of 40 CFR § 73.10(a).
2. ~~———— An existing A~~ A unit that is ~~identified~~ listed in Table 2 or 3 of 40 CFR § 73.10 and any other existing utility unit, except a unit under subsection B of this section.
3. A utility unit, except a unit under subsection B of this section, that:
  - a. Is a new unit;
  - b. Did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990 but serves such a generator after November 15, 1990;
  - c. Was a simple combustion turbine on November 15, 1990, but adds or uses auxiliary firing after November 15, 1990;
  - d. Was an exempt cogeneration facility under subsection B 4 of this section but during any three calendar-year period after November 15, 1990, sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;

e. Was an exempt qualifying facility under subsection B 5 of this section but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;

f. Was an exempt independent power production facility under subsection B 6 of this section but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or

g. Was an exempt solid waste incinerator under subsection B 7 of this section but during any three calendar-year period after November 15, 1990, consumes 20% or more (on a Btu basis) fossil fuel.

B. The following types of units are not affected units subject to the requirements of the acid rain program:

1. A simple combustion turbine that commenced operation before November 15, 1990.

2. Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.

3. Any unit that during 1985, did not serve a generator which produced electricity for sale ~~during 1985 or~~ and that did not as of November 15, 1990, and does not currently serve a generator that produces electricity for sale.

4. A cogeneration facility which:

a. For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it shall be presumed to be consistent with the actual operation

from 1985 through 1987. However, if in any three calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program; or

b. For units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program.

5. A qualifying facility that:

a. Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15% of its total planned net output capacity; and

b. Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130% of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

6. An independent power production facility that:

a. Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15% of its total planned net output capacity; and

b. Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130% of its total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

7. A solid waste incinerator, if more than 80% (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 through 1987 must be greater than 80% for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first three years of operation must be greater than 80% for such an incinerator to be exempt. If, during any three calendar-year period after November 15, 1990, such incinerator consumes 20% or more (on a Btu basis) fossil fuel, such incinerator shall be an affected source under the acid rain program.

8. A non-utility unit.

9. A unit for which an exemption under § 72.7, § 72.8, or § 72.14 is in effect. Although such a unit is not an affected unit, the unit shall be subject to the requirements of § 72.7, § 72.8, or § 72.14, as applicable to the exemption.

C. A certifying official of an owner or operator of any unit may petition the administrator for a determination of applicability under 40 CFR § 72.6(c). ~~The administrator's determination of applicability shall be binding upon the board, unless the petition is found to have contained significant errors or omissions.~~

1. The petition shall be in writing and shall include identification of the unit and relevant facts about the unit. In the petition, the certifying official shall certify, by his or her signature, the statements set forth at § 72.21(b)(2). Within 10 business days of receipt of any written determination by the administrator covering the unit, the certifying official shall provide each owner or operator of the unit, facility, or source with a copy of the petition and a copy of the administrator's response.

2. The petition may be submitted to the administrator at any time but, if possible, should be submitted prior to the issuance (including renewal) of a Phase II acid rain permit for the unit.

9 VAC 5-80-390. New units exemption.

A. This section applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05% or less by weight, as determined in accordance with subsection D 1 of this section.

B. The designated representative, authorized in accordance with Subpart B of 40 CFR Part 72, of a source that includes a unit under subsection A of this section may petition the board for a written exemption, or to renew a written exemption, for the unit from the requirements of the acid rain program as described in subsection C 1 of this section. The petition shall be submitted on a form approved by the board which includes the following elements:

1. Identification of the unit.
2. The nameplate capacity of each generator served by the unit.
3. A list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with subsection A of this section.
4. A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.
5. The special provisions in subsection D of this section.

C. The board shall issue, for any unit meeting the requirements of subsections A and B of this section, a written exemption from the requirements of the acid rain program except for the requirements specified in this section, 40 CFR §§ 72.2 through 72.7, and 40 CFR §§ 72.10 through 72.13 (general provisions); provided that no unit shall be

exempted unless the designated representative of the unit surrenders, and the administrator deducts from the unit's allowances tracking system account, allowances pursuant to 40 CFR §§ 72.7(c)(1)(i) and (d)(1) (new units exemption).

1. The exemption shall take effect on January 1 of the year immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with subsection C 2 of this section, provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of the acid rain program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.

2. In considering and issuing or denying a written exemption under this subsection, the board shall apply the permitting procedures in 9 VAC 5-80-510 C by:

a. Treating the petition as an acid rain permit application under such provisions;

b. Issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions; and

c. Issuing or denying a proposed written exemption that is treated as the issuance or denial of a proposed permit under such provisions, provided that no provision under 9 VAC 5-80-510 C concerning the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this section.

3. A written exemption issued under this section shall have a term of five years from its effective date, except as provided in subsection D 3 of this section.

D. The following provisions apply to units exempted under this section:

1. The owners and operators of each unit exempted under this section shall determine the sulfur content by weight of its fuel as follows:

a. For petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using American Society for Testing and Materials (ASTM) methods ASTM D4057-88 and ASTM D129-91, ASTM D2622-94 or ASTM D4294-90 (see 9 VAC 5-20-21).

b. For natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be assumed to be 0.05% or less by weight.

c. For gaseous fuel (other than natural gas) that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ASTM methods ASTM D1072-90 and ASTM D1265-92 (see 9 VAC 5-20-21); provided that if the gaseous fuel is delivered by pipeline to the unit, a sample of the fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using ASTM method ASTM D1072-90 (see 9 VAC 5-20-21).

2. The owners and operators of each unit exempted under this section shall retain at the source that includes the unit, the records of the results of the tests performed under subsection D 1 a and D 1 c of this section and a copy of the purchase agreements for the fuel under subsection D 1 of this section, stating the sulfur content of such fuel. Such records and documents shall be retained for five years from the date they are created.

3. On the earlier of the date the written exemption expires, the date a unit exempted under this section burns any fuel with a sulfur content in excess of 0.05% by weight (as determined in accordance with subsection D 1 of this section), or 24 months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe, the unit shall no longer be exempted under this section and shall be subject to all requirements of the acid rain program, except that:

a. Notwithstanding 9 VAC 5-80-430 C, the designated representative of the source that includes the unit shall submit a complete acid rain permit application on the later of January 1, 1998 or the date the unit is no longer exempted under this section.

b. For purposes of applying monitoring requirements under 40 CFR Part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements of subsection A of this section.

9 VAC 5-80-400. Retired units exemption.

~~A. This section applies to any affected unit that is retired prior to the issuance, including renewal, of an acid rain permit for the unit as a final permit.~~

~~B. The designated representative, authorized in accordance with Subpart B of 40 CFR Part 72, of a source that includes a unit under subsection A of this section may petition the board for a written exemption, or to renew a written exemption, for the unit from certain requirements of the acid rain program.~~

~~1. A petition under this section shall be submitted on or before:~~

~~a. The deadline for submitting an acid rain permit application for Phase II; or~~

~~b. If the unit has a Phase II acid rain permit, the deadline for reapplying for such permit.~~

~~2. The petition under this section shall be submitted on a form approved by the board which includes the following elements:~~

\_\_\_\_\_ a. \_\_\_\_\_ Identification of the unit;

\_\_\_\_\_ b. \_\_\_\_\_ The applicable deadline under subsection B 1 of this section;

\_\_\_\_\_ c. \_\_\_\_\_ The actual or expected date of retirement of the unit;

\_\_\_\_\_ d. \_\_\_\_\_ The following statement: "I certify that this unit 'is' or 'will be', as applicable, permanently retired on the date specified in this petition and will not emit any sulfur dioxide or nitrogen oxides after such date;"

\_\_\_\_\_ e. \_\_\_\_\_ A description of any actions that have been or will be taken and provide the basis for the certification in subsection B 2 d of this section; and

\_\_\_\_\_ f. \_\_\_\_\_ The special provisions in subsection D of this section.

\_\_\_\_\_ C. \_\_\_\_\_ The board shall issue, for any unit meeting the requirements of subsections A and B of this section, a written exemption from the requirements of this article and 40 CFR Part 72 except for the requirements specified in this section and 40 CFR §§ 72.1 through 72.6, 40 CFR § 72.8, and 40 CFR §§ 72.10 through 72.13.

\_\_\_\_\_ 1. \_\_\_\_\_ The exemption shall take effect on January 1 of the year following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with subsection C 2 of this section; provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of this article and 40 CFR Part 72 concerning all years for which the unit was not exempted, even if such requirements arise or must be complied with after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.

~~\_\_\_\_\_ 2. \_\_\_\_\_ In considering and issuing or denying a written exemption under subsection C 1 of this section, the board shall apply the procedures in 9 VAC 5-80-510 C by:~~

~~\_\_\_\_\_ a. \_\_\_\_\_ Treating the petition as an acid rain permit application under such provisions;~~

~~\_\_\_\_\_ b. \_\_\_\_\_ Issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions; and~~

~~\_\_\_\_\_ c. \_\_\_\_\_ Issuing or denying a proposed written exemption that is treated as a proposed permit under such provisions, provided that no provision under 9 VAC 5-80-510 C concerning the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this section.~~

~~\_\_\_\_\_ 3. \_\_\_\_\_ A written exemption issued under this section shall have a term of five years, except as provided in subsection D 3 of this section.~~

~~\_\_\_\_\_ D. \_\_\_\_\_ The following provisions apply to units exempted under this section:~~

~~\_\_\_\_\_ 1. \_\_\_\_\_ A unit exempted under this section shall not emit any sulfur dioxide and nitrogen dioxide starting on the date it is exempted.~~

~~\_\_\_\_\_ 2. \_\_\_\_\_ The owners and operators of a unit exempted under this section shall comply with monitoring requirements in accordance with 40 CFR Part 75 and shall be allocated allowances in accordance with 40 CFR Part 73.~~

~~\_\_\_\_\_ 3. \_\_\_\_\_ A unit exempted under this section shall not resume operation unless the designated representative of the source that includes the unit submits an acid rain permit application for the unit not less than 24 months prior to the later of January 1, 2000 or the date the unit is to resume operation. On the earlier of the date the written exemption expires or the date an acid rain permit application is submitted or is required to be submitted under this~~

~~paragraph, the unit shall no longer be exempted under this section and shall be subject to all requirements of this article and 40 CFR Part 72.~~

- A. This section applies to any affected unit (except for an opt-in source) that is permanently retired.
  
- B. The following provisions apply:
  - 1. Any affected unit (except for an opt-in source) that is permanently retired shall be exempt from the acid rain program, except for the provisions of this section, §§ 72.2 through 72.6, §§ 72.10 through 72.13, and subpart B of 40 CFR Part 73.
  
  - 2. The exemption under subsection B 1 of this section shall become effective on January 1 of the first full calendar year during which the unit is permanently retired. By December 31 of the first year that the unit is to be exempt under this section, the designated representative (authorized in accordance with subsection B of this section), or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit a statement to the board otherwise responsible for administering a Phase II acid rain permit for the unit. A copy of the statement shall also be submitted to the administrator. The statement shall state (in a format prescribed by the administrator) that the unit is permanently retired and will comply with the requirements of paragraph (d) of 40 CFR 72.8.
  
  - 3. After receipt of the notice under subsection B 2 of this section, the board shall amend the federal operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under subsections B 1 and D of this section.
  
- C. A unit that was issued a written exemption under this section and that is permanently retired shall be exempt from the acid rain program, except for the provisions of this section, §§ 72.2 through 72.6, §§ 72.10 through 72.13, and subpart B of 40 CFR Part 73, and shall be subject to the requirements of subsection D of this section in lieu of the requirements set forth in the written exemption. The board shall amend the federal operating permit covering the source at

which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this subsection and under subsection D of this section.

D. The following special provisions apply:

1. A unit exempt under this section shall not emit any sulfur dioxide and nitrogen oxides starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart B of 40 CFR Part 73. If the unit is a Phase I unit, for each calendar year in Phase I, the designated representative of the unit shall submit a Phase I permit application in accordance with subparts C and D of 40 CFR Part 72 and an annual certification report in accordance with §§ 72.90 through 72.92 and is subject to §§ 72.95 and 72.96.

2. A unit exempt under this section shall not resume operation unless the designated representative of the source that includes the unit submits a complete acid rain permit application under § 72.31 for the unit not less than 24 months prior to the later of January 1, 2000, or the date on which the unit is first to resume operation.

3. The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the acid rain program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

4. For any period for which a unit is exempt under this section, the unit is not an affected unit under the acid rain program and 40 CFR Parts 70 and 71 and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under 40 CFR Parts 70 and 71 of this chapter.

5. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the

period, in writing by the administrator or the permitting authority. The owners and operators bear the burden of proof that the unit is permanently retired.

6. The following provisions apply to the loss of exemption:

a. On the earlier of the following dates, a unit exempt under subsection B or C of this section shall lose its exemption and become an affected unit under the acid rain program and 40 CFR Parts 70 and 71:

(1) The date on which the designated representative submits an acid rain permit application under subsection D 2 of this section; or

(2) The date on which the designated representative is required under subsection D 2 of this section to submit an acid rain permit application.

b. For the purpose of applying monitoring requirements under 40 CFR Part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit resumes operation.

9 VAC 5-80-410. General.

A. No permit may be issued pursuant to this article until the article has been approved by the administrator, whether full, interim, partial, for federal delegation purposes, or otherwise.

B. If requested in the application for a permit or permit renewal submitted pursuant to this article, the board may combine the requirements of and the permit for a source subject to ~~[9 VAC 5-80-40 the state operating permit program]~~ with the requirements of and the permit for a source subject to this article provided the application contains the necessary information required for a permit under ~~[9 VAC 5-80-40 the state operating permit program]~~.

C. For the purpose of this article, the phrase "~~these regulations~~ Regulations for the Control and Abatement of Air Pollution" means ~~the entire Regulations for the Control and Abatement of Air Pollution 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.) through 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.)~~. For purposes of implementing and enforcing those provisions of this article associated with applicable federal requirements as well as those provisions of this article intended to implement Title V of the federal Clean Air Act, the phrase "~~these regulations~~ Regulations for the Control and Abatement of Air Pollution" means only those provisions ~~of 9 VAC 5-10-10 et seq. through 9 VAC 5-80-10 et seq.~~ that have been approved by EPA as part of the ~~State Implementation Plan~~ implementation plan or otherwise have been approved by or found to be acceptable by EPA for the purpose of implementing requirements of the federal Clean Air Act. For the purpose of this article, terms and conditions relating to applicable federal requirements shall be derived only from provisions ~~of 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.) through 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.)~~ that qualify as applicable federal requirements.

9 VAC 5-80-420. Standard requirements.

- A. The following requirements apply to affected sources and affected units subject to this article:
1. The designated representative of each affected source and each affected unit at the source shall:
    - a. Submit a complete acid rain permit application (including a compliance plan) under this article in accordance with the deadlines specified in 9 VAC 5-80-430 C; and
    - b. Submit in a timely manner a complete reduced utilization plan if required under 40 CFR 72.43; and
    - c. Submit in a timely manner any supplemental information that the board determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.

2. The owners and operators of each affected source and each affected unit at the source shall:

a. Operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the board; and

b. Have an acid rain permit.

B. The following monitoring requirements apply to affected sources and affected units subject to this article:

1. The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in 40 CFR Part 75 and § 407 of the federal Clean Air Act.

2. The emissions measurements recorded and reported in accordance with 40 CFR Part 75 and § 407 of the federal Clean Air Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.

3. The requirements of 40 CFR Parts 75 and 76 shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the federal Clean Air Act and other provisions of the federal operating permit for the source.

C. The following requirements regarding sulfur dioxide limitations and allowances apply to affected sources and affected units subject to this article:

1. The owners and operators of each source and each affected unit at the source shall:

a. Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount after deductions under 40 CFR § 73.34(c) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

b. Comply with the applicable acid rain emissions limitation for sulfur dioxide.

2. Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the federal Clean Air Act.

3. An affected unit shall be subject to the requirements under subsection C 1 of this section as follows:

a. Starting January 1, ~~2000~~ 1995, an affected unit under 9 VAC 5-80-380 A 2; or

b. Starting on or after January 1, 1995, in accordance with §§ 72.41 and 72.43, an affected unit under § 72.6(a)(2) or (3) that is a substitution or compensating unit; or

c. Starting January 1, 2000, an affected unit under § 72.6(a)(2) that is not a substitution or compensating unit; or

d. Starting on the later of January 1, 2000 or the deadline for monitor certification under 40 CFR Part 75, an affected unit under 9 VAC 5-80-380 A 3 that is not a substitution or compensating unit.

4. Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the acid rain program.

5. An allowance shall not be deducted, in order to comply with the requirements under subsection C 1 a of this section, prior to the calendar year for which the allowance was allocated.

6. An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain permit application, the acid rain permit, or the written exemption under 9 VAC 5-80-390 and 9 VAC 5-80-400 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

7. An allowance allocated by the administrator under the acid rain program does not constitute a property right.

D. The owners and operators of the source and each affected unit at the source shall comply with the acid rain applicable emissions limitation for nitrogen oxides.

E. The following excess emissions requirements apply to affected sources and affected units subject to this article:

1. The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 CFR Part 77, and to the board.

2. The owners and operators of an affected unit that has excess emissions in any calendar year shall:

a. Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 CFR Part 77; and

b. Comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

F. The following recordkeeping and reporting requirements apply to affected sources and affected units subject to this article:

1. Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the administrator or board.

a. The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR § 72.24, provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

b. All emissions monitoring information, in accordance with 40 CFR Part 75, provided that to the extent that 40 CFR Part 75 provides for a three year period for recordkeeping, the three year period shall apply.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.

d. Copies of all documents used to complete an acid rain permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of the acid rain program.

2. The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under 9 VAC 5-80-470 and 9 VAC 5-80-490 P and 40 CFR Part 75.

G. The following requirements concerning liability apply to affected sources and affected units subject to this article:

1. Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under 9 VAC 5-80-390 or 9 VAC 5-80-400, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to § 113(c) of the federal Clean Air Act and by the board pursuant to §§ 10.1-1316 and 10.1-1320 of the Code of Virginia.

2. Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to § 113(c) of the federal Clean Air Act and 18 U.S.C. 1001 and by the board pursuant to §§ 10.1-1316 and 10.1-1320 of the Code of Virginia.

3. No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.

4. Each affected source and each affected unit shall meet the requirements of the acid rain program.

5. Any provision of the acid rain program that applies to an affected source including a provision applicable to the designated representative of an affected source shall also apply to the owners and operators of such source and of the affected units at the source.

6. Any provision of the acid rain program that applies to an affected unit including a provision applicable to the designated representative of an affected unit shall also apply to the owners and operators of such unit. Except as provided under 9 VAC 5-80-460 Phase II repowering extension plans, 40 CFR § 72.41 (substitution plans), § 72.43 (reduced utilization plans), § 72.44 (Phase II repowering extensions), § 74.47 (thermal energy plans), and Part 76 (NO<sub>x</sub> averaging plans), and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 including 40 CFR §§ 75.16, 75.17, and 75.18, the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the

designated representative and that is located at a source of which they are not owners or operators or the designated representative.

7. Each violation of a provision of the acid rain program regulations by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the federal Clean Air Act.

H. No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under 9 VAC 5-80-390 or 9 VAC 5-80-400 shall be construed as:

1. Except as expressly provided in Title IV of the federal Clean Air Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the federal Clean Air Act, including the provisions of Title I of the federal Clean Air Act relating to applicable National Ambient Air Quality Standards or ~~State Implementation Plans~~ the implementation plan;

2. Limiting the number of allowances a unit can hold, provided that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the federal Clean Air Act;

3. Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state regulation, or limiting such state regulation, including any prudence review requirements under such state law;

4. Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or

5. Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

9 VAC 5-80-430. Applications.

A. A single application is required identifying each emission unit subject to this article. The application shall be submitted according to the requirements of this section, 9 VAC 5-80-440 and procedures approved by the board. Where several emissions units are included in one affected source, a single application covering all units in the source shall be submitted. A separate application is required for each affected source subject to this article.

B. For each source subject to this article, the responsible official shall submit a timely and complete permit application in accordance with subsections C and D of this section.

C. The following requirements concerning timely applications apply to affected sources and affected units subject to this article:

1. No owner or operator of any affected source shall operate the source or affected unit without a permit that states its acid rain program requirements.

2. The designated representative of any affected source shall submit a complete acid rain permit application by the following applicable deadlines:

a. For any affected source with an existing unit described under 9 VAC 5-80-380 A 2, the designated representative shall submit a complete acid rain permit application governing such unit to the board as follows:

(1) For sulfur dioxide, on or before January 1, 1996; and

(2) For nitrogen oxides, on or before January 1, 1998.

b. For any affected source with a new unit described under 9 VAC 5-80-380 A 3 a, the designated representative shall submit a complete acid rain permit application governing such unit to the board at least 24 months before the later of January 1, 2000 or the date on which the unit commences operation.

c. For any affected source with a unit described under 9 VAC 5-80-380 A 3 b, the designated representative shall submit a complete acid rain permit application governing such unit to the board at least 24 months before the later of January 1, 2000 or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

d. For any affected source with a unit described under 9 VAC 5-80-380 A 3 c, the designated representative shall submit a complete acid rain permit application governing such unit to the board at least 24 months before the later of January 1, 2000 or the date on which the auxiliary firing commences operation.

e. For any affected source with a unit described under 9 VAC 5-80-380 A 3 d, the designated representative shall submit a complete acid rain permit application governing such unit to the board before the later of January 1, 1998 or March 1 of the year following the three calendar-year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

f. For any affected source with a unit described under 9 VAC 5-80-380 A 3 e, the designated representative shall submit a complete acid rain permit application governing such unit to the board before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

g. For any affected source with a unit described under 9 VAC 5-80-380 A 3 f, the designated representative shall submit a complete acid rain permit application governing such unit to the board before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

h. For any affected source with a unit described under 9 VAC 5-80-380 A 3 g, the designated representative shall submit a complete acid rain permit application governing such unit to the board before the later of January 1, 1998 or March 1 of the year following the three calendar-year period in which the incinerator consumed 20% or more fossil fuel (on a Btu basis).

3. The responsible official for an affected source applying for a permit under this article for the first time shall submit a complete application pertaining to all applicable requirements other than the acid rain program requirements on a schedule to be determined by the department but no later than 12 months following the effective date of approval of Article 1 (9 VAC 5-80-50 et seq.) of this chapter by the administrator, to include approval for federal delegation purposes.

4. The owner of a source subject to the requirements of ~~§ 112(g)(2) (construction, reconstruction or modification of sources of hazardous air pollutants) of the federal Clean Air Act or to the provisions of 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, or 9 VAC 5-80-30~~ the new source review program shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this article would prohibit such construction or change in operation, the owner shall obtain a permit revision before commencing operation. The owner of a source may file a complete application to obtain the permit or permit revision under this article on the same date the permit application is submitted under the requirements of ~~§ 112(g)(2) of the federal Clean Air Act or under 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, or 9 VAC 5-80-30~~ the new source review program.

5. For purposes of permit renewal, the owner shall submit an application at least six months but no earlier than 18 months prior to the date of permit expiration.

D. The following requirements concerning the completeness of the permit application apply to affected sources and affected units subject to this article:

1. To be determined complete, an application shall contain all information required pursuant to 9 VAC 5-80-440.

2. Applications for permit revision or for permit reopening shall supply information required under 9 VAC 5-80-440 only if the information is related to the proposed change.

3. Within 60 days of receipt of the application, the board shall notify the applicant in writing either that the application is or is not complete. If the application is determined not to be complete, the board shall provide (i) a list of the deficiencies in the notice and (ii) a determination as to whether the application contains sufficient information to begin a review of the application.

4. If the board does not notify the applicant in writing within 60 days of receipt of the application, the application shall be deemed to be complete.

5. For minor permit modifications under 9 VAC 5-80-570, a completeness determination shall not be required.

6. If, while processing an application that has been determined to be complete, the board finds that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

7. The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, or 9 VAC 5-80-30~~ the new source review program.

8. Upon notification by the board that the application is complete or after 60 days following receipt of the application by the board, the applicant shall submit three additional copies of the complete application to the board.

9. The board shall submit a written notice of application completeness to the administrator within 10 working days following a determination by the board that the acid rain permit application is complete.

E. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. An applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date a complete application was filed but prior to release of a draft permit.

F. The following requirements concerning the application shield apply to affected sources and affected units subject to this article:

1. If an applicant submits a timely and complete application for an initial permit or renewal under this section, the failure of the source to have a permit or the operation of the source without a permit shall not be a violation of this article until the board takes final action on the application under 9 VAC 5-80-510.

2. No source shall operate after the time that it is required to submit a timely and complete application under subsections C and D of this section for a renewal permit, except in compliance with a permit issued under this article.

3. If the source applies for a minor permit modification and wants to make the change proposed under the provisions of either 9 VAC 5-80-570 F or 9 VAC 5-80-580 E, the failure of the source to have a permit modification or the operation of the source without a permit modification shall not be a violation of this article until the board takes final action on the application under 9 VAC 5-80-510.

4. If the source notifies the board that it wants to make an operational flexibility permit change under 9 VAC 5-80-680 B, the failure of the source to have a permit modification or operation of the source without a permit

modification for the permit change shall not be a violation of this article unless the board notifies the source that the change is not a permit change as specified in 9 VAC 5-80-680 B 1 a.

5. If an applicant submits a timely and complete application under this section for a permit renewal but the board fails to issue or deny the renewal permit before the end of the term of the previous permit, (i) the previous permit shall not expire until the renewal permit has been issued or denied and (ii) all the terms and conditions of the previous permit, including any permit shield granted pursuant to 9 VAC 5-80-500, shall remain in effect from the date the application is determined to be complete until the renewal permit is issued or denied.

6. The protection under subsections F 1 and F 5 (ii) of this section shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the applicant fails to submit by the deadline specified in writing by the board any additional information identified as being needed to process the application.

7. Permit application shield and binding effect of acid rain permit application for the affected source.

a. Once a designated representative submits a timely and complete acid rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an acid rain permit under 9 VAC 5-80-420 A 2 and 9 VAC 5-80-430 C.

b. The protection provided under subsection F 7 a of this section shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the designated representative fails to submit by the deadline specified in writing by the board any supplemental information identified as being needed to process the application.

c. Prior to the earlier of the date on which an acid rain permit is issued subject to administrative appeal under 40 CFR Part 78 or is issued as a final permit, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid rain permit application shall be deemed to be operating in compliance with the acid rain program.

d. A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.

G. The responsibilities of the designated representative shall be as follows:

1. The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72 and, concurrently, shall submit a copy to the board.

2. Each submission under the acid rain program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

3. In each submission under the acid rain program, the designated representative shall certify, by his signature:

a. The following statement, which shall be included verbatim in such submission: "I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made."

b. The following statement, which shall be included verbatim in such submission: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted

in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

4. The board shall accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with subsections G 2 and G 3 of this section.

5. The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

a. By the date of submission, of any acid rain program submissions by the designated representative;

b. Within 10 business days of receipt of a determination, of any written determination by the administrator or the board; and

c. Provided that the submission or determination covers the source or the unit.

6. The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under subsection G 5 of this section, unless the owner or operator expressly waives the right to receive such a copy.

H. Except as provided in 40 CFR § 72.23, no objection or other communication submitted to the administrator or the board concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the board, under the acid rain program. In the event of such communication, the board is not required to stay any

submission or the effect of any action or inaction under the acid rain program. The board shall not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

I. The responsibilities of the responsible official shall be as follows:

1. Any application form, report, compliance certification, or other document required to be submitted to the board under this article that concerns applicable requirements other than the acid rain program requirements may be signed by a responsible official other than the designated representative.

2. Any responsible official signing a document required to be submitted to the board under this article shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

9 VAC 5-80-440. Application information required.

A. The board shall furnish application forms to applicants.

B. Each application for a permit shall include, but not be limited to, the information listed in subsections C through K of this section.

C. Identifying information as follows shall be included:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

3. Identification of each affected unit at the source for which the permit application is submitted.

4. If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

D. Emissions-related information as follows shall be included:

1. All emissions of pollutants for which the source is major and all emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit with the following exceptions.

(1) Any emissions unit exempted from the requirements of this subsection because the emissions level or size of the unit is deemed to be insignificant under 9 VAC 5-80-720 B or C shall be listed in the permit application and identified as an insignificant activity. This requirement shall not apply to emissions units listed in 9 VAC 5-80-720 A.

(2) Regardless of the emissions units designated in 9 VAC 5-80-720 A or C or the emissions levels listed in 9 VAC 5-80-720 B, the emissions from any emissions unit shall be included in the permit

application if the omission of those emissions units from the application would interfere with the determination of the applicability of this article, the determination or imposition of any applicable requirement, or the calculation of permit fees.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent that the emissions are quantifiable.

2. Additional information related to the emissions of air pollutants sufficient for the board to verify which requirements are applicable to the source, and other information necessary to determine and collect any permit fees owed under Article 2 (9 VAC 5-80-310 et seq.) of this chapter. Identification and description of all points of emissions described in subsection D 1 of this section in sufficient detail to establish the basis for fees and applicability of requirements of ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act.

3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

4. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

7. Other information required by any applicable requirement (including information related to stack height limitations required under 9 VAC 5-40-20 I or 9 VAC 5-50-20 H).

8. Calculations on which the information in subsections D 1 through 7 of this section is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

E. Air pollution control requirement information as follows shall be included:

1. Citation and description of all applicable requirements, including those covering activities deemed insignificant under Article 4 (9 VAC 5-80-710 et seq.) of this part.

2. Description of or reference to any applicable test method for determining compliance with each applicable requirement.

F. Additional information that may be necessary to implement and enforce other requirements of ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act or to determine the applicability of such requirements.

G. An explanation of any proposed exemptions from otherwise applicable requirements.

H. Additional information as determined to be necessary by the board to define alternative operating scenarios identified by the source pursuant to 9 VAC 5-80-490 J or to define permit terms and conditions implementing operational flexibility under 9 VAC 5-80-680.

I. Compliance plan information as follows shall be included:

1. A description of the compliance status of the source with respect to all applicable requirements.

2. A description as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

c. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

3. A complete acid rain compliance plan for each affected unit, in accordance with 9 VAC 5-80-450.

4. A compliance schedule as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement or by the board if no specific requirement exists.

c. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the

source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or board order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

5. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

6. The requirements of subsection I of this section shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the federal Clean Air Act with regard to the schedule and method or methods the source will use to achieve compliance with the acid rain emissions limitations.

J. Compliance certification information as follows shall be included:

1. A certification of compliance with all applicable requirements by a responsible official or a plan and schedule to come into compliance or both as required by subsection I of this section.

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the board.

4. A statement indicating the source is in compliance with any applicable federal requirements concerning enhanced monitoring and compliance certification.

K. If applicable, a statement indicating that the source has complied with the applicable federal requirement to register a risk management plan under § 112(r)(7) of the federal Clean Air Act or, as required under subsection I of this section, has made a statement in the source's compliance plan that the source intends to comply with this applicable federal requirement and has set a compliance schedule for registering the plan.

L. Regardless of any other provision of this section, an application shall contain all information needed to determine or to impose any applicable requirement or to evaluate the fee amount required under the schedule approved pursuant to Article 2 (9 VAC 5-80-310 et seq.) of this chapter.

M. The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by 40 CFR § 72.72(b)(4).

N. The applicant shall meet the requirements of 9 VAC 5-80-420 concerning permit applications, operation of the affected source, monitoring, sulfur dioxide, nitrogen dioxide, excess emissions, recordkeeping and reporting, liability, and effect on other authorities.

9 VAC 5-80-450. Acid rain compliance plan and compliance options.

A. For each affected unit included in an acid rain permit application, a complete acid rain compliance plan shall include:

1. For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit's compliance subaccount (after deductions under 40 CFR § 73.34(c)) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with this section and 9 VAC 5-80-460, one or more of the acid rain compliance options.

2. For nitrogen oxides emissions, a certification that the unit will comply with the applicable emission limitation established by 40 CFR Part 76 in 40 CFR §§ 76.5, 76.6., or 76.7 or shall specify one or more acid rain compliance options, in accordance with the requirements of ~~§ 407 of the federal Clean Air Act and~~ 40 CFR Part 76.

B. The acid rain compliance plan may include a multi-unit compliance option under 9 VAC 5-80-460 or § 407 of the federal Clean Air Act or 40 CFR Part 76.

1. A plan for a compliance option that includes units at more than one affected source shall be complete only if:

a. Such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and

b. A complete permit application is submitted covering each unit governed by such plan.

2. The board's approval of a plan under subsection B 1 of this section that includes units in more than one state shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

C. In the compliance plan, the designated representative of an affected unit may propose, in accordance with this section and 9 VAC 5-80-460, any acid rain compliance option for conditional approval, provided that an acid rain compliance option under § 407 of the federal Clean Air Act may be conditionally proposed only to the extent provided in 40 CFR Part 76.

1. To activate a conditionally-approved acid rain compliance option, the designated representative shall notify the board in writing that the conditionally-approved compliance option will actually be pursued beginning January 1 of a specified year. Such notification shall be subject to the limitations on activation under 9 VAC 5-80-

460 and 40 CFR Part 76. If the conditionally-approved compliance option includes a plan described in subsection B 1 of this section, the designated representative of each source governed by the plan shall sign and certify the notification.

2. The notification under subsection C 1 of this section shall specify the first calendar year and the last calendar year for which the conditionally-approved acid rain compliance option is to be activated. A conditionally-approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

3. Upon submission of a notification meeting the requirements of subsections C 1 and C 2 of this section, the conditionally-approved acid rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally-approved compliance option.

4. A notification meeting the requirements of subsections C 1 and C 2 of this section will revise the unit's permit in accordance with 9 VAC 5-80-620.

D. The following requirements concerning terminations of compliance options apply to affected sources and affected units subject to this article:

1. The designated representative for a unit may terminate an acid rain compliance option by notifying the board in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under 9 VAC 5-80-460 and 40 CFR Part 76. If the compliance option includes a plan described in subsection B 1 of this section, the designated representative for each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the limitations or terminations under subpart D or 40 CFR Part 72 and regulations implementing § 407 of the federal Clean Air Act.

2. The notification under subsection D 1 of this section shall specify the calendar year for which the termination will take effect.

3. Upon submission of a notification meeting the requirements of subsections D 1 and D 2 of this section, the termination becomes binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

4. A notification meeting the requirements of subsections D 1 and D 2 of this section will revise the unit's permit in accordance with 9 VAC 5-80-620.

9 VAC 5-80-460. Repowering extensions.

A. This section shall apply to the designated representative of:

a. Any existing affected unit that is a coal-fired unit and has a 1985 actual sulfur dioxide emissions rate equal to or greater than 1.2 lbs/mmBtu; or

b. Any new unit that will be a replacement unit, as provided in subsection B 2 of this section, for a unit meeting the requirements of subsection A 1 a of this section; or

c. Any oil- or gas-fired unit or both that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Secretary of Energy.

A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan from the requirement to comply with such unit's acid rain emissions limitations for sulfur dioxide.

B. The designated representative of any unit meeting the requirements of subsection A 1 a of this section may include in the unit's acid rain permit application a repowering extension plan that includes a demonstration that:

1. The unit will be repowered with a qualifying repowering technology in order to comply with the emissions limitations for sulfur dioxide; or

2. The unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.

C. In order to apply for a repowering extension, the designated representative of a unit under subsection A of this section shall:

1. Submit to the board, by January 1, 1996, a complete repowering extension plan;

2. Submit to the administrator before June 1, 1997, a complete petition for approval of repowering technology in accordance with 40 CFR § 72.44(d) and submit a copy to the board; and

3. If the repowering extension plan is submitted for conditional approval, submit to the board by December 31, 1997, a notification to activate the plan in accordance with 9 VAC 5-80-450 C.

D. A complete repowering extension plan shall include the following elements:

1. Identification of the existing unit governed by the plan.

2. The unit's ~~State Implementation Plan~~ sulfur dioxide emissions limitation in the implementation plan.

3. The unit's 1995 actual sulfur dioxide emissions rate, ~~or best estimate of the actual emissions rate, provided that the actual emissions rate is submitted to the board by January 30, 1996.~~

4. A schedule for construction, installation, and commencement of operation of the repowering technology approved or submitted for approval under 40 CFR § 72.44(d) with dates for the following milestones:

a. Completion of design engineering;

b. For a plan under subsection B 1 of this section, removal of the existing unit from operation to install the qualified repowering technology;

c. Commencement of construction;

d. Completion of construction;

e. Start-up testing;

f. For a plan under subsection B 2 of this section, shutdown of the existing unit; and

g. Commencement of commercial operation of the repowering technology.

5. For a plan under subsection B 2 of this section:

a. Identification of the new unit. A new unit shall not be included in more than one repowering extension plan.

b. Certification that the new unit will replace the existing unit.

c. Certification that the new unit has the same designated representative as the existing unit.

d. Certification that the existing unit will be permanently retired from service on or before the date the new unit commences commercial operation.

6. The special provisions of subsection G of this section.

E. The board shall not approve a repowering extension plan until the administrator makes a conditional determination that the technology is a qualified repowering technology, unless the board approves such plan subject to the conditional determination of the administrator.

1. Permit issuance shall be as follows:

a. Upon a conditional determination by the administrator that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the board that such plan meets the requirements of this section, the board shall issue the acid rain portion of the federal operating permit including:

(1) The approved repowering extension plan; and

(2) A schedule of compliance with enforceable milestones for construction, installation, and commencement of operation of the repowering technology and other requirements necessary to ensure that emission reduction requirements under this section will be met.

b. Except as otherwise provided in subsection F of this section, the repowering extension shall be in effect starting January 1, 2000 and ending on the day before the date (specified in the acid rain permit) on which the existing unit will be removed from operation to install the qualifying repowering technology or will be permanently removed from service for replacement by a new unit with such technology, provided that the repowering extension shall end no later than December 31, 2003.

c. The portion of the federal operating permit specifying the repowering extension and other requirements under subsection E 1 a of this section shall be subject to the administrator's final determination, under 40 CFR § 72.44(d)(4), that the technology to be used in the repowering extension plan is a qualifying repowering technology.

3. Allowances shall be allocated in accordance with 40 CFR § 72.44(f)(3) and (g).

F. The following provisions apply with respect to failed repowering projects:

1. If, at any time before the end of the repowering extension under subsection E 1 b of this section, the designated representative of a unit governed by an approved repowering extension plan submits the notification under 9 VAC 5-80-470 D that the owners and operators have decided to terminate efforts to properly design, construct, and test the repowering technology specified in the plan before completion of construction or start-up testing, the designated representative may submit to the board a proposed permit modification demonstrating that such efforts were in good faith. If such demonstration is to the satisfaction of the administrator, the unit shall not be deemed in violation of the federal Clean Air Act because of such a termination and the board shall revise the federal operating permit in accordance with subsection F 2 of this section.

2. Regardless of whether notification under subsection F 1 of this section is given, the repowering extension shall end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under 9 VAC 5-80-470 D. The administrator shall deduct allowances (including a pro rata deduction for any fraction of a year) from the allowance tracking system account of the existing unit to the extent necessary to ensure that, beginning the day after the extension ends, allowances are allocated in accordance with 40 CFR § 73.21(c)(1).

3. The designated representative of a unit governed by an approved repowering extension plan may submit to the board a proposed permit modification demonstrating that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in

the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits, the unit shall not be deemed in violation of the federal Clean Air Act because of such failure to achieve the emissions reduction limitations. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of the multiple combustion emissions (including sulfur dioxide and nitrogen oxides) from such unit while operating the technology at nameplate capacity. If such demonstration is to the satisfaction of the administrator, the following shall occur:

a. The unit shall not be deemed in violation of the federal Clean Air Act because of such failure to achieve the emissions reduction limitations;

b. The board shall revise the acid rain portion of the federal operating permit in accordance with subsections F 3 b and F 3 c of this section;

c. The existing unit may be retrofitted or repowered with another clean coal or other available control technology; and

d. The repowering extension shall continue in effect until the earlier of the date the existing unit commences commercial operation with such control technology or December 31, 2003. The board shall allocate or deduct allowances as necessary to ensure that allowances are allocated in accordance with paragraph (f)(3) of 40 CFR § 72.44.

~~G. The following special provisions apply with respect to repowering extensions:~~

~~1. The following requirements concerning emissions limitations apply:~~

~~a. Allowances allocated during the repowering extension under subsections E 2 and F of this section to a unit governed by an approved repowering extension plan shall not be transferred to any allowance tracking system account other than the unit accounts of other units at the same source as that unit.~~

~~\_\_\_\_\_ b. Any existing unit governed by an approved repowering extension plan shall be subject to the acid rain emissions limitations for nitrogen oxides in accordance with § 407 of the federal Clean Air Act and 40 CFR Part 76 beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.~~

~~\_\_\_\_\_ c. No existing unit governed by an approved repowering extension plan shall be eligible for a waiver under § 111(j) of the federal Clean Air Act.~~

~~\_\_\_\_\_ d. No new unit governed by an approved repowering extension plan shall receive an exemption from the requirements imposed under § 111 of the federal Clean Air Act.~~

~~\_\_\_\_\_ 2. Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of 9 VAC 5-80-470.~~

~~\_\_\_\_\_ 3. The following requirements concerning liability apply:~~

~~\_\_\_\_\_ a. The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan or this section at that or any other unit governed by the plan.~~

~~\_\_\_\_\_ b. The units governed by the plan under subsection B 2 of this section shall continue to have a common designated representative until the existing unit is permanently retired under the plan.~~

~~\_\_\_\_\_ 4. Except as provided in subsection F of this section, a repowering extension plan shall not be terminated after December 31, 1999.~~

1. The following special provisions apply with regard to emissions limitations.

a. For sulfur dioxide, allowances allocated during the repowering extension under paragraphs (f)(3) and (g)(2)(iii) of 40 CFR § 72.40 to a unit governed by an approved repowering extension plan shall not be transferred to any allowance tracking system account other than the unit accounts of other units at the same source as that unit.

b. For nitrogen oxides, any existing unit governed by an approved repowering extension plan shall be subject to the acid rain emissions limitations for nitrogen oxides in accordance with 40 CFR Part 76 beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.

c. No existing unit governed by an approved repowering extension plan shall be eligible for a waiver under § 111(j) of the federal Clean Air Act.

d. No new unit governed by an approved repowering extension plan shall receive an exemption from the requirements imposed under § 111 of the federal Clean Air Act.

2. Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of 40 CFR § 72.94.

3. The following provisions regarding liability apply.

a. The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan at that or any other unit governed by the plan, including liability for fulfilling the obligations specified in 40 CFR Part 77 and § 411 of the federal Clean Air Act.

b. The units governed by the plan under paragraph (b)(2) of 40 CFR § 72.40 shall continue to have a common designated representative until the exiting unit is permanently retired under the plan.

4. Except as provided in paragraph (g) of 40 CFR § 72.40, a repowering extension plan shall not be terminated after December 31, 1999.

9 VAC 5-80-470. Units with repowering extension plans.

A. No later than January 1, 2000, the designated representative of a unit governed by an approved repowering plan shall submit to the administrator and the board:

1. Satisfactory documentation of a preliminary design and engineering effort.
2. A binding letter agreement for the executed and binding contract (or for each in a series of executed and binding contracts) for the majority of the equipment to repower the unit using the technology conditionally approved by the administrator under 40 CFR § 72.44(d)(3).
3. The letter agreement under subsection A 2 of this section shall be signed and dated by each party and specify:
  - a. The parties to the contract;
  - b. The date each party executed the contract;
  - c. The unit to which the contract applies;
  - d. A brief list identifying each provision of the contract;
  - e. Any dates to which the parties agree, including construction completion date;
  - f. The total dollar amount of the contract; and

g. A statement that a copy of the contract is on site at the source and will be submitted upon written request of the administrator or the board.

B. The designated representative of a unit governed by an approved repowering plan shall notify the administrator and the board in writing at least 60 days in advance of the date on which the existing unit is to be removed from operation so that the qualified repowering technology can be installed, or is to be replaced by another unit with the qualified repowering technology, in accordance with the plan.

C. Not later than 60 days after the units repowered under an approved repowering plan commences operation at full load, the designated representative of the unit shall submit a report to the administrator and the board comparing the actual hourly emissions and percent removal of each pollutant controlled at the unit to the actual hourly emissions and percent removal at the existing unit under the plan prior to repowering, determined in accordance with 40 CFR Part 75.

D. If at any time before the end of the repowering extension and before completion of construction and start-up testing, the owners and operators decide to terminate good faith efforts to design, construct, and test the qualified repowering technology on the unit to be repowered under an approved repowering plan, then the designated representative shall submit a notice to the administrator and the board by the earlier of the end of the repowering extension or a date within 30 days of such decision, stating the date on which the decision was made.

9 VAC 5-80-480. Emission caps.

A. The board may establish an emission cap for sources or emissions units applicable under this article when the applicant requests that a cap be established.

B. The criteria in subsections B 1 through B 5 of this section shall be met in establishing emission standards for emission caps to the extent necessary to assure that emissions levels are met permanently.

1. If an emissions unit was subject to emission standards prescribed in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution prior to the date the permit is issued, a standard covering the emissions unit and pollutants subject to the emission standards shall be incorporated into the permit issued under this article.

2. A permit issued under this article may also contain emission standards for emissions units or pollutants that were not subject to emission standards prescribed in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution prior to the issuance of the permit.

3. Each standard shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination thereof for each affected pollutant.

4. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued.

b. The emissions rate based on the potential to emit of the emissions unit.

5. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination thereof.

C. Using the significant modification procedures of 9 VAC 580-590, an emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subsections B 1 and B 4 of this section and provided the increased emission levels would not make the source subject to ~~[9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, or 9 VAC 5-80-30 the new source review program, as appropriate].~~

9 VAC 5-80-490. Permit content.

A. The following requirements apply to permit content:

1. The board shall include in the permit all applicable requirements for all emissions units ~~except those deemed insignificant in Article 4 (9 VAC 5-80-710 et seq.) of this chapter.~~

2. The board shall include in the permit applicable requirements that apply to fugitive emissions.

3. Each permit issued under this article shall include the elements listed in subsections B through P of this section.

4. Each acid rain permit (including any draft or proposed acid rain permit) shall contain the following elements:

a. All elements required for a complete acid rain permit application under 9 VAC 5-80-440, as approved or adjusted by the board;

b. The applicable acid rain emissions limitation for sulfur dioxide; and

c. The applicable acid rain emissions limitation for nitrogen oxides.

5. Each acid rain permit is deemed to incorporate the definitions of terms under 9 VAC 5-80-370.

B. Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards:

1. The permit shall specify and reference applicable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

2. The permit shall specify and reference the origin of and authority for each term or condition and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

3. If applicable requirements contained in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution allow a determination of an alternative emission limit at a source, equivalent to that contained in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution, to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

C. Each permit shall contain terms and conditions setting out the following elements identifying equipment specifications and operating parameters:

1. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

2. Specifications for air pollution control equipment installed or to be installed ~~and the circumstances under which such equipment shall be operated.~~

3. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved.

The information on any specification required in subsections C 1 and 2 may be included in the permit for informational purposes only and does not form an enforceable term or condition of the permit unless: (i) the specification is an applicable federal requirement, (ii) the specification is derived from and necessary to enforce an applicable federal requirement, (iii) the operation of the source contrary to the specification would violate an applicable federal requirement, or (iv) the owner voluntarily takes the specification as a state enforceable term or condition of the permit pursuant to 9 VAC 5-80-300.

D. Each permit shall contain a condition setting out the expiration date, reflecting a fixed term of five years.

E. Each permit shall contain terms and conditions setting out the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods promulgated pursuant to § 504(b) or § 114(a)(3) of the federal Clean Air Act concerning compliance monitoring, including enhanced compliance monitoring. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specific monitoring or testing is adequate to assure compliance at least to the same extent as the applicable [requirements relating to] monitoring or testing [requirements] that are not included in the permit as a result of such streamlining.

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring

sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subsection F 1 a of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of subsection E 2 of this section.

3. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

F. The following requirements concerning recordkeeping and reporting apply:

1. To meet the requirements of subsection E of this section with respect to recordkeeping, the permit shall contain terms and conditions setting out all applicable recordkeeping requirements and requiring, where applicable, the following:

a. Records of monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements.

(2) The date(s) analyses were performed.

(3) The company or entity that performed the analyses.

(4) The analytical techniques or methods used.

(5) The results of such analyses.

(6) The operating conditions existing at the time of sampling or measurement.

b. Retention of records of all monitoring data and support information for at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

2. To meet the requirements of subsection E of this section with respect to reporting, the permit shall contain terms and conditions setting out all applicable reporting requirements and requiring the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 9 VAC 5-80-430 G.

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The board shall define "prompt" in the permit condition in relation to (i) the degree and type of deviation likely to occur and (ii) the applicable requirements.

G. Each permit shall contain terms and conditions with respect to enforcement that state the following:

1. If any condition, requirement or portion of the permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of the permit.

2. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the federal Clean Air Act or the Virginia Air Pollution Control Law or both and is grounds for

enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. The permit may be modified, revoked, reopened, and reissued, or terminated for cause as specified in 9 VAC 5-80-490 L, 9 VAC 5-80-640 and 9 VAC 5-80-660. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5. The permit does not convey any property rights of any sort, or any exclusive privilege.

6. The permittee shall furnish to the board, within a reasonable time, any information that the board may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the board copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the board along with a claim of confidentiality.

H. Each permit shall contain a condition setting out the requirement to pay permit fees consistent with Article 2 (9 VAC 5-80-310 et seq.) of this chapter.

I. The following requirements concerning emissions trading apply:

1. Each permit shall contain a condition with respect to emissions trading that states the following:

No permit revision shall be required, under any federally approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

2. Each permit shall contain the following terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases within the permitted facility, to the extent that ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution provide for trading such increases and decreases without a case-by-case approval of each emissions trade:

a. All terms and conditions required under this section except subsection N shall be included to determine compliance.

b. The permit shield described in 9 VAC 5-80-500 shall extend to all terms and conditions that allow such increases and decreases in emissions.

c. The owner shall meet all applicable requirements including the requirements of this article.

J. Each permit shall contain terms and conditions setting out requirements with respect to reasonably anticipated operating scenarios when identified by the source in its application and approved by the board. Such requirements shall include but not be limited to the following:

1. Contemporaneously with making a change from one operating scenario to another, the source shall record in a log at the permitted facility a record of the scenario under which it is operating.

2. The permit shield described in 9 VAC 5-80-500 shall extend to all terms and conditions under each such operating scenario.

3. The terms and conditions of each such alternative scenario shall meet all applicable requirements including the requirements of this article.

K. Consistent with subsections E and F of this section, each permit shall contain terms and conditions setting out the following requirements with respect to compliance:

1. Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required in a permit condition to be submitted to the board shall contain a certification by a responsible official that meets the requirements of 9 VAC 5-80-430 G.

2. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the owner shall allow the board to perform the following:

a. Enter upon the premises where the source is located or emissions-related activity is conducted, or where records must be kept under the terms and conditions of the permit.

b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.

c. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.

d. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

3. A schedule of compliance consistent with 9 VAC 5-80-440 I.

4. Progress reports consistent with an applicable schedule of compliance and 9 VAC 5-80-440 I to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the board. Such progress reports shall contain the following:

a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved.

b. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

5. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

a. The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the board) of submissions of compliance certifications.

b. In accordance with subsection E of this section, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

c. A requirement that the compliance certification include the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(1) The identification of each term or condition of the permit that is the basis of the certification.

(2) The ~~compliance status~~ identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means

shall include, at a minimum, the methods and means required under subsection E of this section. If necessary, the owner or operator shall also identify any other material information that must be included in the certification to comply with section 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information.

~~(3) Whether compliance was continuous or intermittent, and if not continuous, documentation of each incident of non-compliance. The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in 9 VAC 5-80-110 K 5 c (2). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exception to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred.~~

~~(4) Consistent with subsection E of this section, the method or methods used for determining the compliance status of the source at the time of certification and over the reporting period.~~

~~(5) Such other facts as the board may require to determine the compliance status of the source.~~

d. All compliance certifications shall be submitted by the permittee to the administrator as well as to the board.

~~e. Such additional requirements as may be specified pursuant to §§ 114(a)(3) and 504(b) of the federal Clean Air Act.~~

6. Such other provisions as the board may require.

L. Each permit shall contain terms and conditions setting out the following requirements with respect to reopening the permit prior to expiration:

1. The permit shall be reopened by the board if additional applicable federal requirements become applicable to an affected source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to 9 VAC 5-80-430 F.

2. The permit shall be reopened if the board or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The permit shall be reopened if the administrator or the board determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

4. The permit shall be reopened if additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

5. The permit shall not be reopened by the board if additional applicable state requirements become applicable to an affected source prior to the expiration date established under subsection D of this section.

M. The permit shall contain terms and conditions pertaining to other requirements as may be necessary to ensure compliance with ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution, the Virginia Air Pollution Control Law and the federal Clean Air Act.

N. The following requirements concerning federal enforceability apply:

1. All terms and conditions in a permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal Clean Air Act, except as provided in subsection N 2 of this section.

2. The board shall specifically designate as being only state-enforceable any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable federal requirements. Terms and conditions so designated are not subject to the requirements of 9 VAC 5-80-690 concerning review of proposed permits by EPA and draft permits by affected states.

3. The board ~~shall~~ may specifically designate as state enforceable any applicable state requirement that has been submitted to the administrator for review to be approved as part of the ~~State Implementation Plan~~ implementation plan and that has not yet been approved. The permit shall specify that the provision will become federally enforceable upon approval of the provision by the administrator and through an administrative permit amendment.

O. Each permit shall include requirements with respect to allowances held by the source under Title IV of the federal Clean Air Act or 40 CFR Part 73. Such requirements shall include the following:

1. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the federal Clean Air Act or 40 CFR Part 73.

2. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program provided that such increases do not require a permit revision under any other applicable federal requirement.

3. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

4. Any such allowance shall be accounted for according to the procedures established in 40 CFR Part 73.

P. The following requirements concerning annual compliance certification reports apply:

1. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and to the board, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR § 72.90.

2. The submission of complete compliance certifications in accordance with subsection A of this section and 40 CFR Part 75 shall be deemed to satisfy the requirement to submit compliance certifications under 9 VAC 5-80-490 K 5 c with regard to the acid rain portion of the source's federal operating permit.

9 VAC 5-80-500. Permit shield.

A. The board shall expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with all applicable requirements in effect as of the date of permit issuance and as specifically identified in the permit.

B. The permit shield shall cover only the following:

1. Applicable requirements that are covered by terms and conditions of the permit.

2. Any other applicable requirement specifically identified as being not applicable to the source, provided that the permit includes that determination.

C. Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the federal Clean Air Act, as provided in the acid rain program regulations shall be deemed to be operating in compliance with the acid rain program, except as provided in 9 VAC 5-80-420 G 6.

D. Nothing in this section or in any permit issued under this article shall alter or affect the following:

1. The provisions of § 303 of the federal Clean Air Act (emergency orders), including the authority of the administrator under that section.

2. The liability of an owner for any violation of applicable requirements prior to or at the time of permit issuance.

3. The ability to obtain information from a source by the (i) administrator pursuant to § 114 of the federal Clean Air Act (inspections, monitoring, and entry); (ii) board pursuant to § 10.1-1314 or 10.1-1315 of the Virginia Air Pollution Control Law or (iii) department pursuant to § 10.1-1307.3 of the Virginia Air Pollution Control Law.

4. The applicable federal requirements of the acid rain program consistent with § 408(a) of the federal Clean Air Act.

9 VAC 5-80-510. Action on permit application.

A. The board shall take final action on each permit application (including a request for permit modification or renewal) as follows:

1. The board shall issue or deny all permits in accordance with the requirements of this article and this section, including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by 9 VAC 5-80-660 C.

2. For permit revisions, as required by the provisions of 9 VAC 5-80-500 through 9 VAC 5-80-630.

B. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

1. The board has received a complete application for a permit, permit modification, or permit renewal.

2. Except for modifications qualifying for minor permit modification procedures under 9 VAC 5-80-570 or 9 VAC 5-80-580, the board has complied with the requirements for public participation under 9 VAC 5-80-670.

3. The board has complied with the requirements for notifying and responding to affected states under 9 VAC 5-80-690.

4. The conditions of the permit provide for compliance with all applicable requirements, the requirements of Article 2 (9 VAC 5-80-310 et seq.) of this chapter, and the requirements of this article.

5. The administrator has received a copy of the proposed permit and any notices required under 9 VAC 5-80-690 A and B and has not objected to issuance of the permit under 9 VAC 5-80-690 C within the time period specified therein.

C. The issuance of the acid rain portion of the federal operating permit shall be as follows:

1. After the close of the public comment period, the board shall incorporate all necessary changes and issue or deny a proposed acid rain permit.

2. The board shall submit the proposed acid rain permit or denial of a proposed acid rain permit to the administrator in accordance with 9 VAC 5-80-690, the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

3. Action by the administrator shall be as follows:

a. Following the administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the board or, under 9 VAC 5-80-690 C, the administrator shall incorporate any required changes and issue or deny the acid rain permit in accordance with 9 VAC 5-80-490 and 9 VAC 5-80-500.

b. No acid rain permit (including a draft or proposed permit) shall be issued unless the administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

4. Permit issuance deadlines and effective dates shall be as follows:

a. The board shall issue an acid rain permit to each affected source whose designated representative submitted in accordance with 9 VAC 5-80-430 G a timely and complete acid rain permit application by January 1, 1996 that meets the requirements of this article. The permit shall be issued by the effective date specified in subsection C 4 c of this section.

b. Not later than January 1, 1999, the board shall reopen the acid rain permit to add the acid rain program nitrogen oxides requirements, provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with 9 VAC 5-80-430 G. Such reopening shall not affect the term of the acid rain portion of ~~an~~ a federal operating permit.

c. Each acid rain permit issued in accordance with subsection 4 a of this subsection shall take effect by the later of January 1, 1998, or, where the permit governs a unit under 9 VAC 5-80-380 A 3, the deadline for monitor certification under 40 CFR Part 75.

d. Both the acid rain draft and final permit shall state that the permit applies on and after January 1, 2000. The draft and final permit shall also specify which applicable requirements are effective prior to January 1, 2000 and the effective date of those applicable requirements.

e. Each acid rain permit shall have a term of five years commencing on its effective date.

f. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

5. Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the federal operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

6. Invalidation of the acid rain portion of ~~an~~ a federal operating permit shall not affect the continuing validity of the rest of the operating permit, nor shall invalidation of any other portion of the operating permit affect the continuing validity of the acid rain portion of the permit.

D. The board shall take final action on each permit application (including a request for a permit modification or renewal) no later than 18 months after a complete application is received by the board, except for initial permits. The initial permits issued under this article shall be issued by the effective date specified in subsection C 4 c of this section.

E. Issuance of permits under this article shall not take precedence over or interfere with the issuance of preconstruction permits under ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, or 9 VAC 5-80-30 the new source review program~~.

F. The board shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions) as follows. The board shall send this statement to the administrator and to any other person who requests it.

1. The statement of basis shall briefly set forth significant factual, legal, and policy considerations on which the board relied in issuing or denying the draft permit.

2. The statement of basis shall include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

3. The board shall submit to the administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the federal operating permit that may affect the draft acid rain permit.

G. Within five days after receipt of the issued permit, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the board upon request.

9 VAC 5-80-520. Transfer of permits.

A. No person shall transfer a permit from one location to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of an affected source, the new owner shall comply with any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer and shall comply with the requirements of 9 VAC 5-80-560.

C. In the case of a name change of an affected source, the owner shall comply with any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change and shall comply with the requirements of 9 VAC 5-80-560.

9 VAC 5-80-530. Permit renewal and expiration.

A. Permits being renewed shall be subject to the same procedural requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance under this article.

B. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with 9 VAC 5-80-430.

C. If the board fails to act in a timely way on a permit renewal, the administrator may invoke his authority under § 505(e) of the federal Clean Air Act to terminate or revoke and reissue the permit.

9 VAC 5-80-540. Permanent shutdown for emissions trading.

~~\_\_\_\_\_A. The shutdown of an emissions unit is not creditable for purposes of emissions trading or exempt under 9 VAC 5-80-360 C 3 unless a decision concerning shutdown has been made pursuant to the pertinent provisions of this chapter, including subsections B through D of this section 9 VAC 5-20-220.~~

~~\_\_\_\_\_B. Upon a final decision by the board that an emissions unit is shut down permanently, the board shall revoke any applicable permit by written notification to the owner and remove the unit from the emission inventory~~

~~or consider its emissions to be zero in any air quality analysis conducted; and the unit shall not commence operation without a permit being issued under the applicable new source review and operating permit provisions of this chapter.~~

~~\_\_\_\_\_ C. \_\_\_\_\_ The final decision shall be rendered as follows:~~

~~\_\_\_\_\_ 1. \_\_\_\_\_ Upon a determination that the emissions unit has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the unit is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent, a projected date for restart up of the emissions unit and a request for a formal hearing if the owner wishes to exercise that right.~~

~~\_\_\_\_\_ 2. \_\_\_\_\_ If the board should find that the basis for the assertion is not sound or the projected restart up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested. If no hearing is requested, the decision to consider the shutdown permanent shall become final.~~

~~\_\_\_\_\_ D. \_\_\_\_\_ Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that an emissions unit is shutdown permanently prior to any final decision rendered under subsection C of this section.~~

9 VAC 5-80-550. Changes to permits.

A. Changes to emissions units that pertain to applicable federal requirements at a source with a permit issued under this article shall be made as specified under subsections B and C of this section. Changes may be initiated by the permittee as specified in subsection B of this section or by the board or the administrator as specified in subsection C of this section. Changes to emissions units that pertain to applicable state requirements at a source with a permit issued under this article shall be made as specified under subsection E of this section.

B. The following requirements apply with respect to changes initiated by the permittee:

1. With regard to emissions units other than affected units, the permittee may initiate a change to a permit by requesting an administrative permit amendment, a minor permit modification or a significant permit modification. The requirements for these permit revisions can be found in 9 VAC 5-80-560 through 9 VAC 5-80-590.

2. With regard to affected units, the permittee may initiate a change to a permit by requesting a permit modification, fast-track modification, administrative permit amendment or automatic permit amendment. The requirements for these permit revisions can be found in 9 VAC 5-80-600 through 9 VAC 5-80-630.

3. A request for a change by a permittee shall include a statement of the reason for the proposed change.

4. A permit revision may be submitted for approval at any time.

5. No permit revision shall affect the term of the acid rain permit to be revised.

6. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

7. The terms of the acid rain permit shall apply while the permit revision is pending.

8. Any determination or interpretation by the state (including the board or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the administrator in accordance with 9 VAC 5-80-690 C as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with 9 VAC 5-80-620.

9. The standard requirements of 9 VAC 5-80-420 shall not be modified or voided by a permit revision.

10. Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under 9 VAC 5-80-460, § 407 of the federal Clean Air Act and 40 CFR Part 76.

11. For permit revisions not described in 9 VAC 5-80-600 and 9 VAC 5-80-610, the board may, in its discretion, determine which of these sections is applicable.

C. The administrator or the board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-640.

D. Changes to permits shall not be used to extend the term of the permit.

E. The following requirements apply with respect to changes at a source and applicable state requirements:

1. Changes at a source that pertain only to applicable state requirements shall be exempt from the requirements of 9 VAC 5-80-560 through 9 VAC 5-80-630.

2. The permittee may initiate a change pertaining only to applicable state requirements (i) if the change does not violate applicable requirements and (ii) if applicable, the requirements of ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, or 9 VAC 5-80-30~~ the new source review program have been met.

3. Incorporation of permit terms and conditions into a permit issued under this article shall be as follows:

a. Permit terms and conditions pertaining only to applicable state requirements and issued under [~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, or 9 VAC 5-80-30~~ the new source review program] shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

b. Permit terms and conditions for changes to emissions units subject only to applicable state requirements and exempt from the requirements of [~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, or 9 VAC 5-80-30~~ the new source review program] shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

4. The source shall provide contemporaneous written notice to the board of the change. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable state requirement that would apply as a result of the change.

5. The change shall not qualify for the permit shield under 9 VAC 5-80-500.

9 VAC 5-80-560. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Requirement for more frequent monitoring or reporting by the permittee.

4. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-520 have been fulfilled.

5. Incorporation into the permit of the requirements of permits issued under ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, and 9 VAC 5-80-30~~ the new source review program when ~~[9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, and 9 VAC 5-80-30 meet~~ the new source review program meets] (i) procedural requirements substantially equivalent to the requirements of 9 VAC 5-80-670 and 9 VAC 5-80-690 that would be applicable to the change if it were subject to review as a permit modification, and (ii) compliance requirements substantially equivalent to those contained in 9 VAC 5-80-490.

6. Change in the enforceability status from state-only requirements to federally enforceable requirements for provision that have been approved through rulemaking by the administrator to be a part of the ~~State Implementation Plan~~ implementation plan.

B. Administrative permit amendments shall be made according to the following procedures:

1. The board shall take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board shall incorporate the changes without providing notice to the public or affected states under 9 VAC 5-80-670 and 9 VAC 5-80-690. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The board shall submit a copy of the revised permit to the administrator.

4. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

C. The board shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield provisions of 9 VAC 5-80-500 for amendments made pursuant to subsection A 5 of this section.

9 VAC 5-80-570. Minor permit modifications.

- A. Minor permit modification procedures shall be used only for those permit modifications that:
1. Do not violate any applicable requirement;
  2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;
  3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
  4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:
    - a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not Title I modifications; and

6. Are not required to be processed as a significant modification under 9 VAC 5-80-590 or as an administrative permit amendment under 9 VAC 5-80-560.

B. Notwithstanding subsection A of this section and 9 VAC 5-80-580 A, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution or a federally-approved program.

C. An application requesting the use of minor permit modification procedures shall meet the requirements of 9 VAC 5-80-440 for the modification proposed and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9 VAC 5-80-430 G, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.

D. Within five working days of receipt of a permit modification application that meets the requirements of subsection C of this section, the board shall meet its obligation under 9 VAC 5-80-690 A 1 and B 1 to notify the administrator and affected states of the requested permit modification. The board shall promptly send any notice required under 9 VAC 5-

80-690 B 2 to the administrator. The public participation requirements of 9 VAC 5-80-670 shall not extend to minor permit modifications.

E. The timetable for issuance of permit modifications shall be as follows:

1. The board may not issue a final permit modification until after the administrator's 45-day review period or until the administrator has notified the board that he will not object to issuance of the permit modification, whichever occurs first, although the board can approve the permit modification prior to that time.

2. Within 90 days of receipt by the board of an application under minor permit modification procedures or 15 days after the end of the 45-day review period under 9 VAC 5-80-600 C, whichever is later, the board shall do one of the following:

a. Issue the permit modification as proposed.

b. Deny the permit modification application.

c. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures.

d. Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by 9 VAC 5-80-690 A.

F. The following requirements apply with respect to the ability of an owner to make minor permit modification changes:

1. The owner may make the change proposed in the minor permit modification application immediately after the application is filed.

2. After the change under subsection F 1 of this section is made, and until the board takes any of the actions specified in subsection E of this section, the source shall comply with both the applicable federal requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subsection F 2 of this section, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

G. The permit shield under 9 VAC 5-80-500 shall not extend to minor permit modifications.

9 VAC 5-80-580. Group processing of minor permit modifications.

A. Group processing of modifications may be used only for those permit modifications that meet both of the following:

1. Permit modifications that meet the criteria for minor permit modification procedures under 9 VAC 5-80-570 A.

2. Permit modifications that collectively are below the threshold level as follows: 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source in 9 VAC 5-80-370, or five tons per year, whichever is least.

B. An application requesting the use of group processing procedures shall meet the requirements of 9 VAC 5-80-440 for the proposed modifications and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9 VAC 5-80-430 G, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

4. A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subsection A 2 of this section.

5. Certification, consistent with 9 VAC 5-80-430 G, that the source has notified the administrator of the proposed modification. Such notification need contain only a brief description of the requested modification.

6. Completed forms for the board to use to notify the administrator and affected states as required under 9 VAC 5-80-690.

C. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of the pending applications for the source equals or exceeds the threshold level set under subsection A 2 of this section, whichever is earlier, the board promptly shall meet its obligation under 9 VAC 5-80-690 A 1 and B 1 to notify the administrator and affected states of the requested permit modifications. The board shall send any notice required under 9 VAC 5-80-690 B 2 to the administrator. The public participation requirements of 9 VAC 5-80-670 shall not extend to group processing of minor permit modifications.

D. The provisions of 9 VAC 5-80-570 E shall apply to modifications eligible for group processing, except that the board shall take one of the actions specified in 9 VAC 5-80-570 E 1 through E 4 within 180 days of receipt of the application or 15 days after the end of the 45-day review period under 9 VAC 5-80-690 C, whichever is later.

E. The provisions of 9 VAC 5-80-570 F shall apply to modifications eligible for group processing.

F. The permit shield under 9 VAC 5-80-500 shall not extend to minor permit modifications.

9 VAC 5-80-590. Significant modification procedures.

A. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications under 9 VAC 5-80-570 or 9 VAC 5-80-580 or as administrative amendments under 9 VAC 5-80-560. Significant modification procedures shall be used for those permit modifications that:

1. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

2. Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts made under 9 VAC 5 Chapter 40 (9 VAC 9-40-10 et seq.), 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.), or 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.), or a visibility or increment analysis carried out under this chapter.

3. Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification.

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act (early reduction of hazardous air pollutants).

B. An application for a significant permit modification shall meet the requirements of 9 VAC 5-80-430 and 9 VAC 5-80-440 for permit issuance and renewal for the modification proposed and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Completed forms for the board to use to notify the administrator and affected states as required under 9 VAC 5-80-690.

C. The provisions of 9 VAC 5-80-690 shall be carried out for significant permit modifications in the same manner as they would be for initial permit issuance and renewal.

D. The provisions of 9 VAC 5-80-670 shall apply to applications made under this section.

E. The board shall take final action on significant permit modifications within nine months after receipt of a complete application.

F. The owner shall not make the change applied for in the significant modification application until the modification is approved by the board under subsection E of this section.

G. The provisions of 9 VAC 5-80-500 shall apply to changes made under this section.

9 VAC 5-80-600. Permit modifications for affected units.

- A. The following are permit modifications for affected units:
1. Relaxation of an excess emission offset requirement after approval of the offset plan by the administrator.
  2. Incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period.
  3. Determinations concerning failed repowering projects under 9 VAC 5-80-460 F 1 and F 3.
  4. At the option of the designated representative submitting the permit revision, the permit revisions listed in 9 VAC 5-80-610 A.
- B. An application for a permit modification for an affected unit shall meet the requirements of 9 VAC 5-80-430 and 9 VAC 5-80-440 for permit issuance and renewal for the modification proposed.
- C. The provisions of 9 VAC 5-80-690 shall be carried out for permit modifications for affected units in the same manner as they would be for initial permit issuance and renewal.
- D. The provisions of 9 VAC 5-80-670 shall apply to applications made under this section.
- E. The board shall take final action on permit modifications for affected units within nine months after receipt of a complete application.
- F. The owner shall not make the change applied for under this section until the modification is approved by the board under subsection E of this section.

9 VAC 5-80-610. Fast-track modifications for affected units.

A. The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this section or permit modifications for affected units under 9 VAC 5-80-600:

1. Incorporation of a compliance option under 9 VAC 5-80-450 that the designated representative did not submit for approval and comment during the permit issuance process; except that incorporation of a reduced utilization plan that was not submitted during the permit issuance process, that does not designate a compensating unit, and that meets the requirements of § 72.43 of this part may use the administrative permit amendment procedures under § 72.83 of this part.

2. Changes in a substitution plan or reduced utilization plan that result in the addition of a new substitution unit or a new compensating unit under the plan.

~~2. 3.~~ Addition of a nitrogen oxides averaging plan to a permit.

~~3. 4.~~ Changes in a Phase I extension plan, a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension; and

5. Changes in a thermal energy plan that result in any addition or subtraction of a replacement unit or any change affecting the number of allowances transferred for the replacement of thermal energy.

B. The following requirements apply with respect to service, notification, and public participation:

1. The designated representative shall serve a copy of the fast-track modification on the following at least five days prior to the public comment period specified in subsections B 2 and B 3 of this section:

(a) The administrator,

(b) The board,

(c) Affected states, and

(d) Persons on a permit mailing list who have requested information on the opportunity for public comment.

2. Within five business days of serving copies of the fast-track modification under subsection B 1 of this section, the designated representative shall give public notice of the fast-track modification by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. The notice shall contain the information listed in 9 VAC 5-80-670 C 1 a through C 1 h. The notice shall also state that a copy of the fast-track modification is available (i) from the designated representative and (ii) for public inspection during the entire public comment period at the regional office.

3. The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the board and to the designated representative.

C. The timetable for issuance shall be as follows:

1. Within 30 days of the close of the public comment period, the board shall consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification.

2. A fast-track modification shall be effective immediately upon approval and issuance, in accordance with 9 VAC 5-80-510 B 5.

9 VAC 5-80-620. Administrative permit amendments for affected units.

- A. The following permit revisions are administrative permit amendments for affected units:
1. Activation of a compliance option conditionally approved by the board, provided that all requirements for activation under 9 VAC 5-80-450 C and 9 VAC 5-80-460 are met.
  2. Changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted to the administrator in accordance with Subpart B of 40 CFR Part 72.
  3. Correction of typographical errors.
  4. Changes in names, addresses, or telephone or facsimile numbers.
  5. Changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days to the administrator in accordance with Subpart B of 40 CFR Part 72.
  6. Termination of a compliance option in the permit, provided that all requirements for termination under 9 VAC 5-80-450 D shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999.
  7. Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification, provided that they are in accordance with 9 VAC 5-80-420.
  8. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of the 40 CFR Part 76 are met.

9. The addition of a NO<sub>x</sub> early election plan that was approved by the administrator under 40 CFR 76.8.

10. The addition of an exemption for which the requirements have been met under 40 CFR § 72.7 or 72.8 or which was approved by the board; and

\_\_\_\_\_9. 11. Incorporation of changes that the administrator has determined to be similar to those in subsections A 1 through A 8 of this section.

~~B. Administrative permit amendments for affected units shall follow the procedures set forth at 9 VAC 5-80-560 B. The board shall submit the revised portion of the permit to the administrator within 10 working days after the date of final action on the request for an administrative amendment.~~ The following provisions shall apply.

1. The board shall take final action on an administrative permit amendment within 60 days, or, for the addition of an alternative emissions limitation demonstration period, within 90 days, of receipt of the requested amendment and may take such action without providing prior public notice. The source may implement any changes in the administrative permit amendment immediately upon submission of the requested amendment, provided that the requirements of subsection A of this section are met.

2. The board may, on its own motion, make an administrative permit amendment at least 30 days after providing notice to the designated representative of the amendment and without providing any other prior public notice.

3. The board shall designate the permit revision as having been made as an administrative permit amendment. The board shall submit the revised portion of the permit to the administrator.

4. An administrative amendment shall not be subject to the provisions for review by the administrator applicable to a permit modification under 40 CFR § 72.81.

9 VAC 5-80-630. Automatic permit amendments for affected units.

The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's acid rain permit by operation of law without any further review:

A. Upon recordation by the administrator under 40 CFR Part 73, all allowance allocations to, transfers to, and deductions from an affected unit's allowance tracking system account.

B. Incorporation of an offset plan that has been approved by the administrator under 40 CFR Part 77.

9 VAC 5-80-640. Reopening for cause.

A. A permit shall be reopened and revised under any of the conditions stated in 9 VAC 5-80-490 L.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

D. In reopening an acid rain permit, the board shall issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary.

E. The following requirements apply with respect to reopenings for cause by EPA:

1. If the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subsection A of this section, the administrator shall notify the board and the permittee of such finding in writing.

2. The board shall, within 90 days after receipt of such notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the board must require the permittee to submit additional information.

3. The administrator shall review the proposed determination from the board within 90 days of receipt.

4. The board shall have 90 days from receipt of an objection by the administrator to resolve any objection that he makes and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

5. If the board fails to submit a proposed determination pursuant to subsection D 2 of this section or fails to resolve any objection pursuant to subsection D 4 of this section, the administrator shall terminate, modify, or revoke and reissue the permit after taking the following actions:

a. Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in subsections D 1 through D 4 of this section.

b. Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

A. A malfunction constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of subsection B of this section are met.

B. The affirmative defense of malfunction shall be demonstrated by the permittee through properly signed, contemporaneous operating logs, or other relevant evidence that show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.

2. The permitted facility was at the time being properly operated.

3. During the period of the malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.

4. ~~For malfunctions that occurred for one hour or more, the permittee submitted to the board by the deadlines established in subsections B 4 a and B 4 b of this section a notice and written statement containing a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notice fulfills the requirement of 9 VAC 5-80-490 F 2 b to report promptly deviations from permit requirements.~~

~~a. A notice of the malfunction by facsimile transmission, telephone or telegraph as soon as practicable but no later than four daytime business hours of the time when the emission limitations were exceeded due to the malfunction.~~

~~b. A written statement describing the malfunction no later than two weeks following the day the malfunction occurred. The permittee notified the board of the malfunction within two working days following the time when the emission limitations were exceeded due to the malfunction. This notification shall include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notification may be delivered either orally or in writing. The notification may be delivered by electronic mail, facsimile transmission, telephone, telegraph, or any~~

other method that allows the permittee to comply with the deadline. This notification fulfills the requirements of 9 VAC 5-80-490 F 2 b to report promptly deviations from permit requirements. This notification does not release the permittee from the malfunction reporting requirements under 9 VAC 5-20-180 C.

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

9 VAC 5-80-660. Enforcement.

A. The following general requirements apply:

1. Pursuant to § 10.1-1322, failure to comply with any condition of a permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. A permit may be revoked or terminated prior to its expiration date if the owner does any of the following:

a. Knowingly makes material misstatements in the permit application or any amendments thereto.

b. Violates, fails, neglects or refuses to comply with (i) the terms or conditions of the permit, (ii) any applicable requirements, or (iii) the applicable provisions of this article.

3. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation or termination contained in subsection A 2 of this section or for any other violations of these regulations.

B. The following requirements apply with respect to penalties:

1. An owner who violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1316 of the Virginia Air Pollution Control Law.

2. Any owner who knowingly violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

3. Any owner who knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

C. The following requirements apply with respect to appeals:

1. The board shall notify the applicant in writing of its decision, with its reasons, to suspend, revoke or terminate a permit.

2. Appeal from any decision of the board under subsection C 1 of this section may be taken pursuant to 9 VAC 5-20-90, § 10.1-1318 of the Virginia Air Pollution Control Law, and the Administrative Process Act.

3. Appeals of the acid rain portion of ~~an~~ a federal operating permit issued by the board that do not challenge or involve decisions or actions of the administrator under §§ 407 and 410 of the federal Clean Air Act and the

acid rain program regulations shall be conducted according to the procedures in the Administrative Process Act. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 and § 307 of the federal Clean Air Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

4. No administrative appeal or judicial appeal of the acid rain portion of ~~an a federal~~ operating permit shall be allowed more than 90 days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

5. The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

6. No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

a. The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

b. Any standard requirement under 9 VAC 5-80-420;

c. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR Part 75;

d. Uncontested provisions of the decision on appeal; and

e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

7. The board shall serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any federal operating permit or denial of an acid rain portion of any federal operating permit within 30 days of the filing of the appeal.

8. The board shall serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator shall have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with 9 VAC 5-80-690.

D. The existence of a permit under this article shall constitute a defense to a violation of any applicable requirement if the permit contains a condition providing the permit shield as specified in 9 VAC 5-80-500 and if the requirements of 9 VAC 5-80-500 have been met. The existence of a permit shield condition shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of other governmental entities having jurisdiction. Otherwise, the existence of a permit under this article shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

E. The following requirements apply with respect to inspections and right of entry:

1. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law and 9 VAC 5-20-150, has the authority to require that air pollution records and reports be made available upon request and to require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of the permits issued under this article.

2. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law, has the authority, upon presenting appropriate credentials to the owner, to do the following:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in the Commonwealth; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the board or its representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the board shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection.

F. The board may enforce permits issued under this article through the use of other enforcement mechanisms such as consent orders and special orders. The procedures for using these mechanisms are contained in 9 VAC 5-20-20 and 9 VAC 5-20-30 and in §§ 10.1-1307 D, 10.1-1309, and 10.1-1309.1 of the Virginia Air Pollution Control Law.

9 VAC 5-80-670. Public participation.

A. Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30 days. The board shall notify the public using the procedures in subsection B of this section.

B. The board shall notify the public of the draft permit or draft permit modification (i) by advertisement in a newspaper of general circulation in the area where the source is located and (ii) through a notice to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section.

C. The following requirements apply with respect to content of the public notice and availability of information:

1. The notice shall include, but not be limited to, the following:

a. The source name, address and description of specific location.

b. The name and address of the permittee.

c. The name and address of the regional office processing the permit.

d. The activity or activities for which the permit action is sought.

e. The emissions change that would result from the permit issuance or modification.

f. The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the draft permit or draft permit modification, the application, and all relevant supporting materials, including the compliance plan.

g. A brief description of the comment procedures required by this section.

h. A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the board determines to hold a hearing under subsection E 3 of this section.

2. Information on the permit application (exclusive of confidential information under 9 VAC 5-20-150), as well as the draft permit or draft permit modification, shall be available for public inspection during the entire public comment period at the regional office.

D. The board shall provide such notice and opportunity for participation by affected states as is provided for by 9 VAC 5-80-690.

E. The following requirements apply with respect to opportunity for public hearing:

1. The board shall provide an opportunity for a public hearing as described in subsections E 2 through E 6 of this section.

2. Following the initial publication of notice of a public comment period, the board shall receive written requests for a public hearing to consider the draft permit or draft permit modification. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

a. The name, mailing address and telephone number of the requester.

b. The names and addresses of all persons for whom the requester is acting as a representative.

c. The reason why a hearing is requested, including the air quality concern that forms the basis for the request.

d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including information on how the operation of the facility under consideration affects the requester.

3. The board shall review all requests for public hearing filed as required under subdivision E 2 of this section and, within 30 calendar days following the expiration of the public comment period, shall grant a public hearing if it finds both of the following:

a. There is significant public interest in the air quality issues raised by the permit application in question.

b. There are substantial, disputed air quality issues relevant to the permit application in question.

4. The board shall notify by mail the applicant and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain the basis for the decision to grant or deny a public hearing. If the public hearing is granted, the notice shall contain a description of procedures for the public hearing.

5. If the board decides to hold a public hearing, the hearing shall be scheduled at least 30 and no later than 60 days after mailing the notification required in subsection E 4 of this section.

6. The procedures for notification to the public and availability of information used for the public comment period as provided in subsection C of this section shall also be followed for the public hearing. The hearing shall be held in the affected air quality control region.

7. As an alternative to the requirements of subsections E 1 through E 6 of this section, the board may hold a public hearing if an applicant requests that a public hearing be held or if, prior to the public comment period, the board determines that the conditions in subsection E 3 a and b of this section pertain to the permit application in question.

8. The board may hold a public hearing for more than one draft permit or draft permit modification if the location for the public hearing is appropriate for the sources under consideration and if the public hearing time expected for each draft permit or draft permit modification will provide sufficient time for public concerns to be heard.

9. Written comments shall be accepted by the board for at least 15 days after the hearing.

F. The board shall keep (i) a record of the commenters and (ii) a record of the issues raised during the public participation process so that the administrator may fulfill his obligation under § 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted. Such records shall be made available to the public upon request.

9 VAC 5-80-680. Operational flexibility.

A. The board shall allow, under conditions specified in this section, operational flexibility changes at a source that do not require a revision to be made to the permit in order for the changes to occur. Such changes shall be classified as follows: (i) those that contravene an express permit term, or (ii) those that are not addressed or prohibited by the permit. The conditions under which the board shall allow these changes to be made are specified in subsections B and C of this section, respectively.

B. The following requirements apply with respect to changes that contravene an express permit term:

1. The following general requirements apply:

a. The board shall allow a change at an affected source that changes a permit condition with the exception of the following:

(1) A Title I modification or a change subject to requirements under Title IV.

(2) A change that would exceed the emissions allowable under the permit.

(3) A change that would violate applicable requirements.

(4) A change that would contravene federally or state enforceable permit terms or conditions or both that are monitoring (including test methods), recordkeeping, reporting, compliance schedule dates or compliance certification requirements.

b. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

c. The owner, board and the administrator shall attach the notice described in subsection B 1 b of this section to their copy of the relevant permit.

d. The permit shield under 9 VAC 5-80-500 shall not extend to any change made pursuant to subsection B 1 of this section.

2. The following requirements apply with respect to emission trades within permitted facilities provided for in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution:

a. With the exception of the changes listed in subsection B 1 a of this section, the board shall allow permitted sources to trade increases and decreases in emissions within the permitted facility (i) where ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution provide for such emissions trades without requiring a permit revision and (ii) where the permit does not already provide for such emissions trading.

b. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include such information as may be required by the provision in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution authorizing the emissions trade, including at a minimum the name and location of the facility, when the proposed change will occur, a description of the proposed change, any change in emissions, the permit requirements with which the source will comply

using the emissions trading provisions of ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution and which provide for the emissions trade.

c. The permit shield described in 9 VAC 5-80-500 shall not extend to any change made under subsection B 2 of this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of ~~these regulations~~ Regulations for the Control and Abatement of Air Pollution.

3. The following requirements apply with respect to emission trades within affected sources to comply with an emissions cap in the permit:

a. If a permit applicant requests it, the board shall issue permits that contain terms and conditions, including all terms required under 9 VAC 5-80-490 to determine compliance, allowing for the trading of emissions increases and decreases within the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable federal requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure that the emissions trades are quantifiable and enforceable. The board shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

b. The board shall not allow a change to be made under subsection B 3 of this section if it is a change listed in subsection B 1 of this section.

c. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall state when the change will occur and

shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

d. The permit shield under 9 VAC 5-80-500 shall extend to terms and conditions that allow such increases and decreases in emissions.

C. The following requirements apply with respect to changes that are not addressed or prohibited by the permit:

1. The board shall allow the owner to make changes that are not addressed or prohibited by the permit unless the changes are subject to the requirements for Title I modifications or the requirements under Title IV.

2. Each change shall meet all applicable requirements and shall not violate any existing permit term or condition which is based on applicable federal requirements.

3. Sources shall provide contemporaneous written notice to the board and the administrator of each change, except for changes to emissions units deemed insignificant and listed in 9 VAC 5-80-720 A. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable federal requirement that would apply as a result of the change.

4. The change shall not qualify for the permit shield under 9 VAC 5-80-500.

5. The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable federal requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.

9 VAC 5-80-690. Permit review by EPA and affected states.

A. The following requirements apply with respect to transmission of information to the administrator:

1. The board shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit issued under this article.

2. The board shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require to ascertain whether the Virginia program complies with the requirements of the federal Clean Air Act or of 40 CFR Part 70.

B. The following requirements apply with respect to review by affected states:

1. The board shall give notice of each draft permit to any affected state on or before the time that the board provides this notice to the public under 9 VAC 5-80-670, except to the extent that 9 VAC 5-80-570 or 9 VAC 5-80-580 requires the timing of the notice to be different.

2. The board, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under 9 VAC 5-80-570 or 9 VAC 5-80-580), shall notify the administrator and any affected state in writing of any refusal by the board to accept recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the reasons why the board will not accept a recommendation. The board shall not be obligated to accept recommendations that are not based on applicable federal requirements or the requirements of this article.

C. The following requirements apply with respect to objections by EPA:

1. No permit for which an application must be transmitted to the administrator under subsection A of this section shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

2. Any objection by the administrator under subsection C 1 of this section shall include a statement of the reasons for the objection and a description of the terms and conditions that the permit must include to respond to the objection. The administrator shall provide the permit applicant a copy of the objection.

3. Failure of the board to do any of the following also shall constitute grounds for an objection:

a. Comply with subsection A or B of this section or both.

b. Submit any information necessary to review adequately the proposed permit.

c. Process the permit under the public comment procedures in 9 VAC 5-80-670 except for minor permit modifications.

4. If, within 90 days after the date of an objection under subsection C 1 of this section, the board fails to revise and submit a proposed permit in response to the objection, the administrator shall issue or deny the permit in accordance with the requirements of 40 CFR Part 71.

D. The following requirements apply with respect to public petitions to the administrator:

1. If the administrator does not object in writing under subsection C of this section, any person may petition the administrator within 60 days after the expiration of the 45-day review period for the administrator to make such objection.

2. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in 9 VAC 5-80-670, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

3. If the administrator objects to the permit as a result of a petition filed under subsection D 1 of this section, the board shall not issue the permit until the objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection by the administrator.

4. If the board has issued a permit prior to receipt of an objection by the administrator under subsection D 1 of this section, the administrator shall modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 9 VAC 5-80-640 E 4 or E 5 a and b except in unusual circumstances, and the board may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

E. No permit (including a permit renewal or modification) shall be issued by the board until affected states and the administrator have had an opportunity to review the proposed permit as required under this section.

9 VAC 5-80-700. Voluntary inclusions of additional state-only requirements as applicable state requirements in the permit.

A. Upon the request of an applicant, any requirement of ~~these regulations not included in the definition of applicable requirement of any regulation of the board (other than any requirement that is a federal applicable requirement)~~ may be included as an applicable state requirement in a permit issued under this article.

B. If the applicant chooses to make a request under subsection A of this section, the provisions of this article pertaining to applicable state requirements shall apply.

C. The request under subsection A of this section shall be made by including the citation and description of any applicable requirement not defined as such in this article in the permit application submitted to the board under 9 VAC 5-80-440 E.

~~9 VAC 5-80-705. Review and confirmation of this article by board.~~

~~\_\_\_\_\_ A. \_\_\_\_\_ Within three years following the approval by the U.S. Environmental Protection Agency of this article, the department shall provide the board with an analysis to include (i) an assessment of the effectiveness of this article, (ii) the status of any specific federal requirements and the identification of any provisions more stringent than the federal requirements, (iii) the federal approval status of this article and (iv) an assessment of the need for continuation of this article.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ Upon review of the department's analysis, the board shall confirm (i) the continuation of this article, (ii) the repeal of this article or (iii) the need to amend this article. If a decision is made in either of the latter two cases, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

#### 9 VAC 5 CHAPTER 80.

#### PERMITS FOR STATIONARY SOURCES.

#### ARTICLE 4.

#### Insignificant Activities.

9 VAC 5-80-710. General.

A. For the purposes of Article 1 (9 VAC 5-80-50 et seq.) of this chapter, Article 2 (9 VAC 5-80-310 et seq.) of this chapter, and Article 3 (9 VAC 5-80-360 et seq.) of this chapter, insignificant activities shall be those activities listed in 9 VAC 5-80-720. There are three categories of insignificant activities as follows:

1. Insignificant emissions units.

This category includes emissions units that are deemed insignificant because the emissions from these units are considered to be of minimal or no air quality concern for the purpose of identifying the emissions units in a permit application. Emissions units in this category are not required to be included in permit applications submitted

pursuant to Article 1 (9 VAC 580-50 et seq.) of this chapter or Article 3 (9 VAC 5-80-360 et seq.) of this chapter. Insignificant activities falling into this category are listed in 9 VAC 5-80-720 A.

2. Emissions units with insignificant emissions levels.

This category includes emissions units, other than those in subdivision A 1 of this section, that are deemed insignificant for a particular regulated pollutant because the emissions level of the regulated pollutant is sufficiently small so as to be considered of minimal or no air quality concern for the purpose of quantifying the emissions from the emissions units in a permit application. Emissions units emitting at these insignificant levels are required to be identified by listing them as insignificant emissions units in the permit application submitted pursuant to Article 1 (9 VAC 5-80-50 et seq.) of this chapter or Article 3 (9 VAC 5-80-360 et seq.) of this chapter. The list of insignificant emissions units shall also specify the regulated pollutant or pollutants emitted at insignificant emissions levels for each emissions unit on the list. However, information on the amount of emissions from these units is not required to be provided. Insignificant activities in this category are listed in 9 VAC 5-80-720 B.

3. Emissions units of an insignificant size or production rate.

This category includes emissions units, other than those in subdivision 1 or 2 of this subsection, that are deemed insignificant because the emissions from these units are considered to be of minimal or no air quality concern for the purpose of quantifying the emissions from the emissions units in a permit application. Emissions units in this category are required to be identified by listing them as insignificant emissions units in the permit application submitted pursuant to Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this chapter. The list of insignificant emissions units shall also specify the size or the production rate for each emissions unit on the list. Insignificant activities in this category are listed in 9 VAC 5-80-720 C.

4. Regardless of the emissions units designated in 9 VAC 5-80-720 A, B, or C, the emissions from any emissions unit should be included in the permit application submitted pursuant to Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this chapter if the omission of those emissions units would interfere with the

determination of applicability of Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this chapter, the determination of or imposition of any applicable requirement, or the calculation of permit fees.

B. Definitions.

1. For the purpose of this article and subsequent amendments issued by the board, the words or terms shall have the meaning given them in subdivision 2 of this subsection. As used in this article, all terms not defined herein shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

2. Terms defined.

"Uncontrolled emissions" means the emissions from a source when operating at maximum capacity without air pollution control equipment. Air pollution control equipment includes control equipment which is not vital to its operation, except that its use enables the source to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8760 hours of operation per year) of the source, unless the source is subject to state and federally enforceable permit conditions which limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted or processed may be used in determining the uncontrolled emissions of a source. Secondary emissions do not count in determining the uncontrolled emissions of a stationary source.

9 VAC 5-80-720. Insignificant activities.

A. Insignificant activities include the following emissions units.

1. Gas flares or flares used solely to indicate danger to the public.

2. Ventilation systems not used to remove air contaminants generated by or released from specific units of equipment.

3. Air-conditioning units used for human comfort that do not have applicable requirements under Title VI of the Act.

~~3.~~ 4. Portable heaters which can reasonably be relocated through the manual labor of one person.

5. Portable electrical generators that can be moved by hand from one location to another.

~~4.~~ 6. Space heaters operating by direct heat or radiant heat transfer or both.

~~5.~~ 7. Office activities and the equipment and implements used to carry out these activities, such as typewriters, printers, and pens.

8. Tobacco smoking rooms and areas.

~~6.~~ 9. Interior maintenance activities and the equipment and supplies used to carry out these activities, such as janitorial cleaning products and air fresheners, but not cleaning of production equipment.

~~7.~~ 10. Architectural maintenance and repair activities conducted to take care of the buildings and structures at the facility, including repainting, reroofing and sandblasting, where no structural repairs are made in conjunction with the installation of new or permanent facilities.

11. Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating or de-greasing (solvent metal cleaning) activities, and not otherwise triggering a permit modification.

\_\_\_\_\_8. 12.Exterior maintenance activities conducted to take care of the grounds of the source, including lawn maintenance.

13. Internal combustion engines used for dry-cleaning and steam boilers.

14. Laundry activities, except for dry-cleaning and steam boilers.

\_\_\_\_\_9. 15.Bathroom and locker room ventilation and maintenance.

\_\_\_\_\_10. 16.Copying and duplication activities for internal use and support of office activities at the source.

\_\_\_\_\_11. 17.Blueprint copiers and photographic processes used as an auxiliary to the principal equipment at the source.

\_\_\_\_\_12. 18.Equipment used solely for the purpose of preparing food to be eaten on the premises of industrial and manufacturing operations.

19. Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

\_\_\_\_\_13. 20.Safety devices.

\_\_\_\_\_14. 21.Air contaminant detectors and test equipment.

\_\_\_\_\_15. 22.Brazing, soldering or welding equipment used as an auxiliary to the principal equipment at the source.

\_\_\_\_\_16. 23.The engine of any vehicle, including but not limited to any marine vessel, any vehicle running upon rails or tracks, any motor vehicle, any forklift, any tractor, or any mobile construction equipment, including any auxiliary engine that provides cooling or refrigeration of the vehicle.

24. Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.

25. Emergency road flares.

\_\_\_\_\_17. 26.Firefighting equipment and the equipment used to train firefighters.

27. Fire suppression systems.

\_\_\_\_\_18. 28.Laboratories used solely for the purpose of quality control or environmental compliance testing that are associated with manufacturing, production or other industrial or commercial facilities.

\_\_\_\_\_19. 29.Laboratories in primary and secondary schools and in schools of higher education used for instructional purposes.

30. Bench-scale laboratory equipment used for physical or chemical analysis, but no lab fume hoods or vents.

31. Routine calibration and maintenance of laboratory equipment or other analytical instruments.

\_\_\_\_\_20. 32.Air compressors and pumps (engines for these emissions units are covered separately under subdivision C 1 of this section).

33. Pneumatically operated equipment, including hand tools.

34. Emergency (backup) electrical generators at residential locations.

\_\_\_\_\_21. 35.Dumpster.

\_\_\_\_\_22. 36.Grinding or abrasive blasting for nondestructive testing of metals.

\_\_\_\_\_23. 37.Dryers and distribution systems for instrument air.

\_\_\_\_\_24. 38.Parts washer (water-based).

39. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.

40. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.

\_\_\_\_\_25. 41.Dispensing facilities for refueling diesel-powered vehicles or equipment, including any diesel fuel storage tank serving only such dispensing facility, to the extent that this activity is not regulated by § 111 or § 112 of the federal Clean Air Act.

42. Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any volatile organic compound or hazardous air pollutant.

43. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

44. Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

~~\_\_\_\_\_26. 45.~~ Laboratory analytical equipment and vents except at stationary sources primarily engaged in research and development.

46. Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.

~~\_\_\_\_\_27. 47.~~ Non-routine clean out of tanks and equipment for the purposes of worker entry or in preparation for maintenance or decommissioning.

~~\_\_\_\_\_28. 48.~~ Sampling connections and systems used exclusively to withdraw materials for testing and analysis including air contaminant detectors and vent lines.

49. Vents from continuous emission monitors and other analyzers.

~~\_\_\_\_\_29. 50.~~ Maintenance activities such as hand-held or manually-operated maintenance equipment, railroad track maintenance, repair and maintenance cleaning, and maintenance surface preparation activities.

51. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal, or plastic.

52. Carbon monoxide lasers used only on metals and other materials which do not use hazardous air pollutants in the process.

53. Hand-held applicator equipment for hot melt adhesives with no volatile organic compounds in the adhesive formulation.

54. Equipment used for surface coating, painting, dipping, or spraying operations, except those that emit volatile organic compounds or hazardous air pollutants.

55. Drop hammers or hydraulic presses for forging or metalworking.

56. Blacksmith forges.

~~30.~~ 57. Solvent storage cabinet (containers covered).

~~31.~~ 58. Cooling ponds.

~~32.~~ 59. Coal pile run-off ponds.

~~33.~~ 60. Mechanical drive or gear boxes.

~~34.~~ 61. Equipment for steam cleaning or brushing dust off equipment.

~~35.~~ 62. Repair of residential units.

~~36.~~ 63. Farm equipment, with the exception of grain elevators or combustion devices not already listed as insignificant activities.

~~37.~~ 64. Water tanks.

~~38.~~ 65. Hydroblasting.

66. Hydraulic and hydrostatic testing equipment.

\_\_\_\_\_ ~~39.~~ 67. Process raw water treatment (e.g., phosphate).

68. Process water filtration systems and demineralizers.

69. Demineralized water tanks and demineralizer vents.

70. Ozone generators.

\_\_\_\_\_ ~~40.~~ 71. Water cooling tower except for systems including contact process water or water treated with chromium-based chemicals.

\_\_\_\_\_ ~~41.~~ 72. Spill collection tanks.

\_\_\_\_\_ ~~42.~~ 73. Steam vents and leaks from boilers and steam distribution systems.

\_\_\_\_\_ ~~43.~~ 74. Boiler water treatment operations, except cooling towers and those involving use of hydrazine.

75. Oxygen scavenging (de-aeration) of water.

\_\_\_\_\_ ~~44.~~ 76. Herbicide mixing and application activities not involving herbicide manufacture.

\_\_\_\_\_ ~~45.~~ 77. Nonhazardous boiler cleaning solutions.

\_\_\_\_\_ ~~46.~~ 78. Portable or mobile containers.

\_\_\_\_\_ ~~47.~~ 79. Vent or exhaust system for:

- a. Transformer vaults and buildings;
- b. Electric motor and control panel vents;
- c. Deaerators and decarbonators.

\_\_\_\_\_ ~~48.~~ 80. Vents or stacks for sewer lines or enclosed areas required for safety or by code.

\_\_\_\_\_ ~~49.~~ 81. Pump seals.

\_\_\_\_\_ ~~50.~~ 82. Rupture discs for gas handling systems.

\_\_\_\_\_ ~~51.~~ 83. Molasses storage tanks.

\_\_\_\_\_ ~~52.~~ 84. Storage of substances in closed drums, barrels or bottles.

\_\_\_\_\_ ~~53.~~ 85. Purging of natural gas lines.

86.     Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

\_\_\_\_\_ ~~54.~~ 87. Blanking, chopping, trimming, perforating, repacking, and inspecting in connection with plastics manufacturing processes.

88.     Consumer use of paper trimmers/binders.

89.     Laser trimmers using dust collection to prevent fugitive emissions.

\_\_\_\_\_ ~~55.~~ 90. Sealed batteries such as those used for emergency backup power supplies.

91. Batteries and battery charging stations, except at battery manufacturing plants.

—————~~56.~~ 92. Parking lot resurfacing.

93. Environmental chambers not using hazardous air pollutant gases.

94. Shock chambers.

95. Humidity chambers.

96. Solar simulators.

—————~~57.~~ 97. Relief valves, excluding air pollution equipment bypass valves.

98. Steam vents and safety relief valves.

99. Steam leaks.

100. Steam cleaning operations.

101. Steam sterilizers.

B. ——— ~~Emissions~~ Insignificant activities include emissions units, other than those listed in subsection A of this section, with ~~insignificant~~ the following emissions levels.

1. Emissions units with uncontrolled emissions of less than five tons per year of nitrogen dioxide, sulfur dioxide, ~~total suspended particulates~~ or particulate matter (PM<sub>10</sub>). Particulate matter emissions shall be used

to determine uncontrolled emissions for purposes of this subsection only if particulate matter (PM<sub>10</sub>) emissions cannot be quantified in a manner acceptable to the board. If the particulate matter (PM<sub>10</sub>) emissions for any unit can be quantified in a manner acceptable to the board, that unit shall be deemed insignificant for particulate matter.

2. Emissions units with uncontrolled emissions of less than five tons per year of volatile organic compounds.

3. Emissions units with uncontrolled emissions of less than ~~100~~ five tons per year of carbon monoxide.

4. Emissions units with uncontrolled emissions of less than 0.6 tons per year of lead.

5. Emissions units with uncontrolled emissions of hazardous air pollutants at or below ~~the de minimis emissions rates set out in the table in 40 CFR 63.44~~ 1000 pounds per year.

6. Emissions units with uncontrolled emissions of any pollutant regulated under Subpart C of 40 CFR Part 68 if those emissions are below ~~the threshold levels set forth at 40 CFR 63.44, the accidental release threshold levels set forth at 40 CFR 68.130, or 1000 pounds per year, whichever is least~~ less.

C. ~~\_\_\_\_\_ Emissions~~ Insignificant activities include emissions units, other than those listed in subsection A or B of this section, ~~of an insignificant size or production rate~~ with the following sizes or production rates.

1. Internal combustion engines used for standby service, including compressors and pumps used for emergency replacement and portable generators, as follows:

a. Engines burning diesel fuel (maximum 0.5% sulfur) with ~~51,800~~ 259,000 Btu per hour input or less.

- b. Engines burning gasoline with ~~36,413~~ 18,200 Btu per hour input or less.
2. Fuel burning equipment or combustion units with heat input levels less than:
- a. 10 million Btu per hour rated input, using natural gas.
  - b. 1 million Btu per hour rated input, using distillate oil (maximum 0.5% sulfur).
3. Reservoirs and storage tanks for lubricant or used oil with a capacity of less than 1,000 gallons.
4. Internal combustion powered ~~compressors and pumps used for emergency replacement or standby service, operating at 500 hours per year or less,~~ generators used at a facility only when power is unavailable to the facility from the utility, as follows:
- a. ~~Gasoline~~ Diesel-fueled turbine emergency generators of ~~911~~ 780 horsepower or less; <sub>2</sub>
  - b. Diesel-fueled reciprocating emergency generators of ~~6,667~~ 645 horsepower or less; <sub>2</sub>
  - c. Natural gas-fueled turbine emergency generators of ~~45,325~~ 1240 horsepower or less.
  - d. Natural gas-fueled reciprocating emergency generators of 840 horsepower or less.
  - e. Dual-fueled reciprocating emergency generators of 840 horsepower or less.